

MT LEGISLATIVE HISTORY

Chapter 452 1973

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H. Committee on Natural Resources

S. Committee on Natural Resources

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Spec. Session Mar, 12, 13 (vote)

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

SENATE BILL NO. 444
INTRODUCED BY *McGowan, Hinson, McInerney, Louie, Bennett, Huff, Turnage*

89-121 THROUGH 89-123, 89-125, 89-801 THROUGH 89-819, 89-823
THROUGH 89-826, 89-829 THROUGH 89-845, 89-847 THROUGH
89-855, 89-857 THROUGH 89-864, 89-1001 THROUGH 89-1024,
89-2911 THROUGH 89-2936

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A SYSTEM FOR
THE APPROPRIATION AND USE OF SURFACE AND GROUNDWATER;
PROVIDING A PROCEDURE FOR THE DETERMINATION AND CONFIRMATION
OF EXISTING WATER RIGHTS; ESTABLISHING A SYSTEM OF
CENTRALIZED RECORDS OF ALL WATER RIGHTS; REPEALING SECTIONS
89-121 THROUGH 89-123, 89-125, 89-801 THROUGH 89-819, 89-823
THROUGH 89-826, 89-829 THROUGH 89-845, 89-847 THROUGH
89-855, 89-857 THROUGH 89-864, 89-1001 THROUGH 89-1024,
89-2911 THROUGH 89-2936, R.C.M. 1947; AND PROVIDING AN
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF
MONTANA:

Section 1. Short title. This act shall be known and
may be cited as the "Montana Water Use Act."

Section 2. Declaration of policy and purpose. (1)
Pursuant to article IX of the Montana constitution, the

legislature declares that any use of water is a public use,
and that the waters within the state are the property of the
state for the use of its people and are subject to
appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX,
section 3(4) of the Montana constitution, which requires
that the legislature provide for the administration, control
and regulation of water rights and establish a system of
centralized records of all water rights. The legislature
declares that this system of centralized records recognizing
and establishing all water rights is essential for the
documentation, protection, preservation and future
beneficial use and development of Montana's water for the
state and its citizens, and for the continued development
and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of
this act to encourage the wise use of the state's water
resources by making them available for appropriation
consistent with this act, and to provide for the wise
utilization, development and conservation of the waters of
the state for the maximum benefit of its people with the
least possible degradation of the natural aquatic
ecosystems. In pursuit of this policy, the state encourages
the development of facilities which store and conserve
waters for beneficial use, for the maximization of the use

1 of those waters in Montana, for the stabilization of stream
2 flows and for groundwater recharge.

3 (4) Pursuant to article IX, section 3(1) of the
4 Montana constitution, it is further the policy of this state
5 and a purpose of this act to recognize and confirm all
6 existing rights to the use of any waters for any useful or
7 beneficial purpose.

8 Section 3. Definitions. Unless the context requires
9 otherwise, in this act:

10 (1) "Water" means all water of the state, surface and
11 subsurface, regardless of its character or manner of
12 occurrence, including geothermal water.

13 (2) "Beneficial use" means a use of water for the
14 benefit of the appropriator, other persons or the public,
15 including, but not limited to, agricultural (including stock
16 water), domestic, fish and wildlife, industrial, irrigation,
17 mining, municipal, power and recreational uses.

18 (3) "Appropriate" means to divert, impound or
19 withdraw (including by stock for stock water) a quantity of
20 water or in the case of a public agency to reserve water in
21 accordance with section 27.

22 (4) "Existing right" means a right to the use of
23 water which would be protected under the law as it existed
24 prior to the effective date of this act.

25 (5) "Groundwater" means any water beneath the land

1 surface or beneath the bed of a stream, lake, reservoir or
2 other body of surface water, and which is not a part of that
3 surface water.

4 (5) "Well" means any artificial opening or excavation
5 in the ground, however made, by which groundwater is sought
6 or through which it flows under natural pressures or is
7 artificially withdrawn.

8 (7) "Permit" means the permit to appropriate issued
9 by the department under sections 17 through 23.

10 (8) "Certificate" means the certificate of water
11 right issued by the department under sections 16 and 25.

12 (9) "Declaration" means the declaration of an
13 existing right filed with the department under section 8.

14 (10) "Waste" means the unreasonable loss of water
15 through the design or negligent operation of an
16 appropriation or water distribution facility, or the
17 application of water to anything but a beneficial use.

18 (11) "Person" means an individual, association,
19 partnership, corporation, state agency, political
20 subdivision and the United States or any agency thereof.

21 (12) "Department" means the department of natural
22 resources and conservation provided for in section 82A,
23 chapter 15.

24 (13) "Director" means the director of natural
25 resources and conservation, a position provided for in

1 section 82A-1510.

2 (14) "Board" means the board of natural resources and
3 conservation provided for in section 82A-1509.

4 Section 4. Powers and duties of department. (1) The
5 department shall:

6 (a) enforce and administer this act and rules adopted
7 by the board under section 5;

8 (b) prescribe procedures, forms and requirements for
9 applications, permits, certificates, declarations and
10 proceedings under this act, and prescribe the information to
11 be contained in any application, declaration or other
12 document to be filed with the department under this act;

13 (c) keep in its Helena office a centralized public
14 record of permits, certificates, declarations, applications
15 and other documents filed in its office under this act;

16 (d) cooperate with, assist, advise and coordinate
17 plans and activities with the federal, state and local
18 agencies in matters relating to this act.

19 (2) The department may:

20 (a) enter into agreements with federal, state or
21 local agencies necessary to carry out this act;

22 (b) apply for, accept, administer and expend funds,
23 grants, gifts and loans from the federal government or any
24 other public or private source for the purposes of this act.

25 Section 5. Powers and duties of board. (1) The board

1 may prescribe fees or service charges for any public service
2 rendered by the department under this act, including fees
3 for the filing of applications or for the issuance of
4 permits and certificates. There shall be no fees for the
5 filing of declarations or for the issuance of certificates
6 of existing rights.

7 (2) The board may adopt rules necessary to implement
8 and carry out the purposes and provisions of this act.
9 These rules may include rules to:

10 (a) govern the issuance and terms of interim permits
11 authorizing an applicant for a regular permit under this act
12 to begin appropriating water immediately, pending final
13 approval or denial by the department of the application for
14 a regular permit;

15 (b) require the owner or operator of appropriation
16 facilities to install and maintain suitable controlling and
17 measuring devices;

18 (c) require the owner or operator of appropriation
19 facilities to report to the department the readings of
20 measuring devices at reasonable intervals, and to file
21 reports on appropriations;

22 (d) regulate the construction, use and sealing of
23 wells to prevent the waste, contamination or pollution of
24 groundwater.

25 Section 6. Determination of existing rights. (1) The

1 department shall, as soon as practicable, determine existing
2 rights. To accomplish this, the department shall gather
3 data essential to the proper understanding and determination
4 of those existing rights.

5 (2) The department may select and specify areas or
6 sources where the need for a determination of existing
7 rights is most urgent, and first determine the existing
8 rights in those areas or sources.

9 Section 7. Data for determination of existing rights.
10 The data gathered by the department for the determination of
11 existing rights shall include, but are not limited to:

12 (1) court decrees adjudicating water rights in a
13 proceeding commenced prior to the effective date of this
14 act. A decree is determinative of the rights of the parties
15 to it according to its terms; however, the decree is only
16 prima facie evidence of the decreed rights if there are
17 persons who claim rights by filing declarations under
18 section 8 which were not determined when the source of water
19 was adjudicated. Upon request of the department, the clerks
20 of the district courts shall furnish the department copies
21 of all decrees affecting water rights;

22 (2) declarations of existing rights filed under
23 section 8;

24 (3) records of rights acquired under the groundwater
25 code (sections 89-2911 through 89-2936);

1 (4) notices of appropriation filed under sections
2 89-801.2 and 89-810;

3 (5) records of declarations filed under sections
4 89-121 and 89-813;

5 (6) records of statements filed under section 89-907;

6 (7) the findings of water resource surveys conducted
7 by the department and its predecessor agencies;

8 (8) the findings of inspections, surveys,
9 reconnaissance and investigations of the area or source
10 involved as the department makes.

11 Section 8. Declarations of existing rights. (1) The
12 department shall make an order requiring each person
13 claiming an existing right within a specified area or from a
14 specified source to file a declaration of existing right
15 within six (6) months after the effective date of the order.
16 The department shall publish notice of the order once a week
17 for four (4) consecutive weeks prior to its effective date
18 in a newspaper of general circulation in the affected area.
19 Before the last date of publication, the department shall
20 also serve a copy of the order by certified mail upon each
21 appropriator or his successor in interest within the
22 specified area or from the specified source who has
23 requested mailed notice of the order or of whom the
24 department can readily obtain knowledge, and to each person
25 owning or being possessed of lands bordering on the stream

1 or source as ascertained from the land ownership records of
2 the appropriate county. The department shall file in its
3 records proof of service of the notice by affidavit of the
4 publisher in the case of notice by publication, and by its
5 own affidavit in the case of service by mail.

6 (2) A declaration shall be made on a form provided by
7 the department. The information required by the department
8 may include, but is not limited to, the date of
9 appropriation, the date the water was first applied to a
10 beneficial use, the amount of water appropriated, the
11 purpose of the appropriation, the means of diversion, the
12 place of use, and a true copy of any notice or other claim
13 upon which the existing right was initiated or is based.

14 Section 9. Preliminary determination. On the basis
15 of all data obtained, the department shall make a
16 preliminary determination of existing rights and their
17 priority for the area or source under consideration. The
18 department shall prepare a summary of the determination and
19 send a copy by certified mail to each person who has filed a
20 declaration in the proceeding. The department shall file in
21 its records proof of mailing by affidavit.

22 Section 10. Hearings on preliminary determination. A
23 person who has filed a declaration in the proceeding, or any
24 other interested person who feels aggrieved by the
25 preliminary determination, is entitled to a hearing thereon

1 before the department. A request for a hearing must be
2 received by the department within thirty (30) days of the
3 effective date of the preliminary determination. If more
4 than one (1) hearing is requested for a particular area or
5 source, the department may in its discretion consolidate
6 hearings. Notice of the hearing shall be sent by certified
7 mail to all persons who have filed declarations, and the
8 department shall file in its records proof of the mailing by
9 affidavit.

10 Section 11. Final determination. The department
11 shall, on the basis of the preliminary determination and on
12 the basis of any hearing held that may have been requested,
13 make a final determination of each existing right in the
14 area or from the source under consideration. The department
15 shall send a copy of the final determination to each
16 claimant whose existing right is determined and to each
17 person who requested a hearing before the department.

18 Section 12. Filing final determination with district
19 court. (1) The department shall also file a certified copy
20 of the final determination, together with all evidence
21 presented to or considered by the department, with the clerk
22 of a district court of any county in which the area or
23 source included in the order lies.

24 (2) The department shall obtain an order from the
25 court fixing a time not less than thirty-five (35) days from

1 the date of the order for the filing of exceptions to the
2 department's final determination and also fixing a time not
3 less than sixty (60) days from the date of the order for the
4 commencement of hearings on exceptions.

5 (3) The department shall within five (5) days of the
6 issuance of the order send a copy of the order by certified
7 mail to all parties whose existing rights were determined or
8 who requested a hearing under section 10. The department
9 shall file proof by affidavit of the service with the clerk
10 of court.

11 Section 13. Exceptions to final determination. (1)
12 Any person whose existing rights were determined or who
13 requested a hearing under section 10 may file with the court
14 exceptions to the department's final determination. The
15 exception must state with a reasonable degree of certainty
16 the grounds for the exception and must specify the
17 particular paragraphs and pages of the department's final
18 determination to which the exception is taken.

19 (2) A copy of the exception shall be served on the
20 department and all other parties to the determination.

21 Section 14. Hearings on exceptions. The court shall
22 hear any exceptions that are filed. The department is
23 entitled to appear and be heard on the exceptions.

24 Section 15. Judicial review of final determination.
25 The provisions of section 82-4216 of the Montana

1 Administrative Procedure Act govern the court's review of
2 the department's final determination.

3 Section 16. Final decree -- certificate of water
4 right. (1) After the final hearing, the court shall enter a
5 final decree affirming or modifying the final determination
6 of the department. If no exceptions are filed, the court
7 shall affirm the final determination.

8 (2) The court may assess the costs as it deems just.

9 (3) An appeal may be taken from the decree of the
10 court as provided by section 82-4217 of the Montana
11 Administrative Procedure Act.

12 (4) The final decree in each existing right
13 determination is final and conclusive as to all existing
14 rights in the area or source under consideration. The
15 decree is binding on all claimants to water rights outside
16 the determined area or source. After the final decree there
17 shall be no existing rights to water in the area or source
18 under consideration except as stated in the decree.

19 (5) When a final decree of existing rights is made,
20 the department shall issue to each person decreed an
21 existing right a certificate of water right. The original
22 of the certificate shall be sent to the county clerk and
23 recorder in the county wherein the point of diversion or
24 place of use is located for recordation, and a duplicate
25 shall be kept in the office of the department in Helena.

1 After recordation, the clerk and recorder shall send the
2 certificate to the person to whom the right is decreed.

3 Section 17. Right to appropriate -- application for
4 permit. (1) After the effective date of this act, a person
5 may not appropriate water except as provided in this act. A
6 person may only appropriate water for a beneficial use. A
7 right to appropriate water may not be acquired by any other
8 method, including by adverse use, adverse possession,
9 prescription or estoppel; the method prescribed by this act
10 is exclusive.

11 (2) A person may appropriate water only by applying
12 for and receiving a permit from the department. The
13 application shall be made in a form prescribed by the
14 department. The department shall return a defective
15 application for correction or completion together with the
16 reasons for returning it. An application does not lose
17 priority of filing because of defects, if the application is
18 corrected, completed and refiled with the department within
19 thirty (30) days after its return to the applicant, or
20 within a further time as the department may allow.

21 Section 18. Notice of application. (1) Upon receipt
22 of a proper application for a permit, the department shall
23 prepare a notice containing the facts pertinent to the
24 application and shall publish the notice in a newspaper of
25 general circulation in the affected area once a week for

1 three (3) consecutive weeks. Before the last date of
2 publication, the department shall also serve the notice by
3 certified mail upon an appropriator of water or applicant
4 for or holder of a permit who, according to the records of
5 the department, may be affected by the proposed
6 appropriation. A notice shall also be served upon any
7 public agency that has reserved waters in the source under
8 section 27. The department may, in its discretion, also
9 serve notice upon any state agency or other person the
10 department feels may be interested in or affected by the
11 proposed appropriation. The department shall file in its
12 records proof of service by affidavit of the publisher in
13 the case of notice by publication, and by its own affidavit
14 in the case of service by mail.

15 (2) The notice shall state that by a date set by the
16 department (not less than thirty (30) days nor more than
17 sixty (60) days after the last date of publication) persons
18 may file with the department written objections to the
19 application.

20 Section 19. Objections. (1) An objection to an
21 application must be filed by the date specified by the
22 department under section 18(2).

23 (2) The objection must state the name and address of
24 the objector, and facts tending to show that there are no
25 unappropriated waters in the proposed source, that the

1 proposed means of appropriation are inadequate, that the
2 property, rights, or interests of the objector would be
3 adversely affected by the proposed appropriation, or the
4 objector may state any other objections to the proposed
5 appropriation he considers pertinent.

6 Section 20. Hearings on objections. If the department
7 determines that an objection to an application for a permit
8 states a valid objection to the issuance of the permit, it
9 shall hold a public hearing on the objection within sixty
10 (60) days from the date set by the department for the filing
11 of objections, after serving notice of the hearing by
12 certified mail upon the applicant and the objector. The
13 department may consolidate hearings if more than one (1)
14 objection is filed to an application. The department shall
15 file in its records proof of the service by affidavit of the
16 department.

17 Section 21. Action on application. (1) The department
18 shall grant, deny or condition an application for a permit
19 in whole or in part within one hundred twenty (120) days
20 after the last date of publication of the notice of
21 application if no hearing is held, and within one hundred
22 eighty (180) days if a hearing is held.

23 (2) However, an application may not be approved in a
24 modified form or upon terms, conditions or limitations
25 specified by the department, nor denied, unless the

1 applicant is first granted an opportunity to be heard. If
2 no objection is filed against the application, but the
3 department is of the opinion that the application should be
4 approved in a modified form or upon terms, conditions or
5 limitations specified by it, or that the application should
6 be denied, the department shall prepare a statement of its
7 opinion and the reasons therefor. The department shall
8 serve a statement of its opinion by certified mail upon the
9 applicant, together with a notice that the applicant may
10 obtain a hearing by filing a request therefor within thirty
11 (30) days after the notice is mailed. The notice shall
12 further state that the application will be modified in a
13 specified manner, or denied, unless a hearing is requested.

14 Section 22. Criteria for issuance of permit. The
15 department shall issue a permit if:

16 (1) there are unappropriated waters in the source of
17 supply;

18 (2) the rights of a prior appropriator will not be
19 adversely affected;

20 (3) the proposed means of diversion or construction
21 are adequate;

22 (4) the proposed use of water is a beneficial use;

23 (5) the proposed use will not interfere unreasonably
24 with other planned uses or developments.

25 Section 23. Terms of permit. (1) The department may

1 issue a permit for less than the amount of water requested,
2 but in no case may it issue a permit for more water than is
3 requested or than can be beneficially used for the purpose
4 stated in the application. The department may require
5 modification of plans and specifications for the
6 appropriation. It may issue a permit subject to terms,
7 conditions, restrictions and limitations it considers
8 necessary to protect the rights of other appropriators and
9 it may issue temporary or seasonal permits. A permit shall
10 be issued subject to existing rights and any final
11 determination of those rights made under this act.

12 (2) The department may limit the time for
13 commencement of the appropriation works, completion of
14 construction and actual application of the water to the
15 proposed beneficial use. In fixing those time limits, the
16 department shall consider the cost and magnitude of the
17 project, the engineering and physical features to be
18 encountered, and, on projects designed for gradual
19 development and gradually increased use of water, the time
20 reasonably necessary for that gradual development and
21 increased use. For good cause shown by the permittee, the
22 department may reasonably extend time limits.

23 (3) The original of the permit shall be sent to the
24 county clerk and recorder in the county wherein the point of
25 diversion or place of use is located for recordation, and a

1 duplicate shall be kept in the office of the department in
2 Helena. After recordation, the clerk and recorder shall
3 send the certificate to the permittee.

4 Section 24. Revocation of permit. If the work on an
5 appropriation is not commenced, prosecuted or completed
6 within the time stated in the permit or an extension
7 thereof, or if the water is not being applied to the
8 beneficial use contemplated in the permit, or if the permit
9 is otherwise not being followed, the department may after
10 notice require the permittee to show cause why the permit
11 should not be revoked. If the permittee fails to show
12 sufficient cause, the department may revoke the permit.

13 Section 25. Certificate of water right. Upon actual
14 application of water to the proposed beneficial use within
15 the time allowed, the permittee shall notify the department
16 that the appropriation has been properly completed. The
17 department may then inspect the appropriation, and if it
18 determines that the appropriation has been completed in
19 substantial accordance with the permit, it shall issue the
20 permittee a certificate of water right. The original of the
21 certificate shall be sent to the county clerk and recorder
22 in the county wherein the point of diversion or place of use
23 is located for recordation, and a duplicate shall be kept in
24 the office of the department in Helena. After recordation,
25 the clerk and recorder shall send the certificate to the

1 appropriator.

2 Section 26. Reservoirs. A person intending to
3 appropriate water by means of a reservoir shall apply for a
4 permit as prescribed in this act.

5 Section 27. Reservation of waters. (1) The state or
6 any political subdivision or agency thereof, or the United
7 States or any agency thereof may apply to the board to
8 reserve waters for existing or future beneficial uses, or to
9 maintain a minimum flow, level or quality of water
10 throughout the year or at such periods or for such length of
11 time as the board designates.

12 (2) Upon receiving an application, the department
13 shall proceed in accordance with sections 18 through 20.
14 After the hearing provided in section 20, the board shall
15 decide whether to reserve the water for the applicant. The
16 department's costs of giving notice, holding the hearing,
17 conducting investigations and making records, incurred in
18 acting upon the application to reserve water, except the
19 cost of salaries of the department's personnel, shall be
20 paid by the applicant.

21 (3) After the adoption of an order reserving waters,
22 the department may reject an application and refuse a permit
23 for the appropriation of reserved waters, or may, with the
24 approval of the board, issue the permit subject to such
25 terms and conditions it considers necessary for the

1 protection of the objectives of the reservation.

2 (4) A reservation under this section shall not affect
3 existing rights.

4 (5) The board shall, periodically but not less than
5 every ten (10) years, review existing reservations to ensure
6 that the objectives of the reservation are being met.

7 Section 28. Priority. (1) As between appropriators,
8 the first in time is the first in right. Priority of
9 appropriation does not include the right to prevent changes
10 by later appropriators in the condition of water occurrence,
11 such as the increase or decrease of streamflow, or the
12 lowering of a water table, artesian pressure or water level,
13 if the prior appropriator can reasonably exercise his water
14 right under the changed conditions.

15 (2) Priority of appropriation made under this act
16 dates from the filing of an application for a permit with
17 the department.

18 (3) Priority of appropriation perfected before the
19 effective date of this act shall be determined as provided
20 in sections 6 through 16 of this act.

21 Section 29. Changes in appropriation rights. (1) An
22 appropriator may not change the place of diversion, place of
23 use, purpose of use or place of storage without receiving
24 prior approval of such change from the department.

25 (2) The department shall approve the proposed change

1 if it determines that the proposed change will not adversely
2 affect the rights of other persons. If a person files an
3 objection to the proposed change, the department shall hold
4 a hearing thereon prior to its approval or denial of the
5 proposed change. Objections shall meet the requirements of
6 section 19(2) of this act, and hearings shall be held in
7 accordance with section 20.

8 Section 30. Transfer of appropriation right. (1) The
9 right to use water under a permit or certificate of water
10 right shall pass with a conveyance of the land, or transfer
11 by operation of law, unless specifically exempted therefrom.
12 All transfers of interests in appropriation rights shall be
13 without loss of priority.

14 (2) A copy of an instrument which transfers an
15 interest in an appropriation right shall be filed with the
16 department and the county wherein the point of diversion or
17 place of use takes place by the person receiving the
18 appropriation interest.

19 (3) An appropriator may not sever all or any part of
20 an appropriation right from the land to which it is
21 appurtenant, or sell the appropriation right for other
22 purposes or to other lands, or make the appropriation right
23 appurtenant to other lands, without obtaining prior approval
24 from the department. The department shall approve the
25 proposed transfer if the requirements of section 29(2) are

1 met.

2 Section 31. Abandonment of appropriation right. (1)
3 If an appropriator ceases to use all or a part of his
4 appropriation right with the intention of wholly or
5 partially abandoning the right, or if he ceases using his
6 appropriation right according to its terms and conditions
7 with the intention of not complying with those terms and
8 conditions, the appropriation right shall, to that extent,
9 be deemed abandoned and shall immediately expire.

10 (2) If an appropriator ceases to use all or part of
11 his appropriation right, or ceases using his appropriation
12 right according to its terms and conditions, for a period of
13 ten (10) successive years, and there was water available for
14 his use, the appropriation right shall be considered to be
15 conclusively abandoned in whole or for the part not used,
16 regardless of whether the appropriator intended abandonment.

17 (3) This section does not apply to existing rights
18 until they have been determined in accordance with this act.

19 Section 32. Procedure for declaring appropriation
20 rights abandoned. (1) When the department has reason to
21 believe that an appropriator may have abandoned his
22 appropriation right under section 31, or when another
23 appropriator in the opinion of the department files a valid
24 claim that he has been or will be injured by the resumption
25 of use of an appropriation right alleged to have been

1 abandoned, the department shall serve notice requiring the
2 appropriator to show cause at a hearing why his
3 appropriation right should not be declared abandoned. The
4 notice shall include the following information:

5 (a) a description of the appropriation right in
6 question;

7 (b) a statement that unless due and sufficient cause
8 is shown the appropriation right will be held to have been
9 abandoned, for specified reasons;

10 (c) the time and place of the hearing.

11 (2) The notice shall be served personally upon the
12 appropriator at his last known address at least thirty (30)
13 days before the hearing. The department shall serve the
14 notice by certified mail if the appropriator lives outside
15 the state. The department shall file in its records proof
16 of service by affidavit.

17 (3) Within sixty (60) days after the hearing, the
18 department shall make an order determining whether the
19 appropriation right shall be held abandoned, and it shall
20 notify the appropriator as to the contents of the order by
21 certified mail.

22 Section 33. Supervision of water distribution. (1) As
23 of the effective date of this act, the department shall
24 supervise the distribution of water among all appropriators.
25 This supervisory authority includes the supervision of all

1 water commissioners appointed prior to the effective date of
2 this act. The supervision shall be governed by the
3 principle that first in time is first in right, except as
4 provided in subsection (5) of this section.

5 (2) Pending the department's preliminary
6 determination of existing rights, the department shall
7 supervise those rights by reference to pertinent judicial
8 decrees, records of rights acquired pursuant to the
9 groundwater code (sections 89-2911 through 89-2936), and the
10 findings of water resources surveys. If these sources of
11 information are incomplete, existing rights shall be deemed
12 to correspond with local usages concerning recognition of
13 water rights.

14 (3) When a water distribution controversy involving a
15 claimant of an existing right arises upon a source of water
16 in which existing rights have not been determined according
17 to sections 6 through 16 of this act, the department may on
18 its own motion, and shall on the petition of one (1) or more
19 of the parties to the controversy, proceed within a
20 reasonable time to determine existing rights in the source,
21 in accordance with this act.

22 (4) If the department ascertains, by a means
23 reasonably considered sufficient by it, that a person is
24 wasting water, using water unlawfully or preventing water
25 from moving to another person having a prior right to use

1 the same, it may:

2 (a) regulate the controlling works of an
3 appropriation as may be necessary to prevent the wasting or
4 unlawful use of water, or to secure water to a person having
5 a prior right to its use; the department may attach to the
6 controlling works a written notice properly dated and
7 signed, setting forth the fact that the controlling works
8 have been properly regulated by it, which notice shall be
9 legal notice to all persons interested in the appropriation
10 or distribution of the water; or

11 (b) order the person wasting, unlawfully using or
12 interfering with another's rightful use of the water to
13 cease and desist from doing so, and to take such steps as
14 may be necessary to remedy the waste, unlawful use, or
15 interference; or

16 (c) request the attorney general or county attorney
17 to bring suit to enjoin such waste, unlawful use or
18 interference.

19 (5) (a) The department may approve agreements with
20 water users' associations or other groups of appropriators
21 in any area or from any stream or source providing for
22 distribution of the water and controls such as
23 apportionment, rotation, reduction, cessation or proration
24 of uses. It is the intent of this act that existing
25 agreements with water users' associations shall not be

1 affected by this act.

2 (b) Upon the department's approval, the agreement
3 shall govern the distribution of water as therein provided.
4 The department may, if the agreement is not being followed,
5 dissolve an agreement at any time, and, upon notice to the
6 affected appropriators, distribute the water according to
7 the water rights of the appropriators.

8 Section 34. Field offices -- district water
9 commissioners. (1) The director may divide the state into
10 not more than seven (7) water districts and establish a
11 field office for each district, for the purpose of securing
12 the best protection to all appropriators and the economical
13 and efficient supervision of water distribution. As the
14 director considers necessary he may at any time change the
15 boundaries of water districts to better serve the intent and
16 purposes of this act.

17 (2) The director shall appoint one (1) district water
18 commissioner for each field office to serve at the
19 director's pleasure. A water commissioner shall be
20 qualified by experience, education, training and skill in
21 the fields of water law administration and the measurement
22 of flowing water, groundwater, evaporation, seepage and
23 drainage. The board may adopt rules prescribing the
24 contents of an examination to be given to an applicant for
25 water commissioner.

(3) A district water commissioner is the department's agent in supervising the distribution of waters within the water district, and he shall perform other duties the director requires. The district water commissioner may regulate the controlling works of an appropriation within the district, under the general supervision of the director.

(4) The district water commissioner may, within his district, arrest a person violating this act and deliver that person promptly into the custody of the sheriff or other law enforcement officer within the county. Immediately upon delivery the water commissioner making the arrest shall, in writing and under oath, make complaint before the proper justice of the peace against the person so arrested.

Section 35. Part-time water commissioners. (1) Upon application by an interested appropriator making a reasonable showing of the necessity therefor, and which application has been approved by the district water commissioner, the director shall appoint a part-time water commissioner for any area or source where the director considers closer regulation of water distribution is necessary. A part-time water commissioner shall serve at the pleasure of the director.

(2) (a) The salary of a part-time water commissioner shall be fixed by the director, but the salary and expenses

of the part-time water commissioner shall be borne by the appropriators receiving the benefits as provided in this subsection. The department shall pay a part-time water commissioner for the time actually employed, and for his expenses. Each appropriator shall reimburse the department his proportionate share of the total cost in the same ratio that the amount of water he is authorized to use bears to the total amount of water authorized for use from the source of water, during each month. On or about the first of each month the department shall present each appropriator a statement of his proportionate share of the cost of maintaining the services of the part-time water commissioner for the preceding month. If the appropriators are organized into a water users' association, the statement shall be presented to the proper officers of the association for payment.

(b) Upon the failure of an appropriator to pay his share of the cost, the part-time water commissioner may, with the approval of the district water commissioner and the director, prevent further use of water by the delinquent appropriator until payment is made. The county attorney for the county in which the appropriator's appropriation is located shall, upon request of the district water commissioner, bring suit in a court of competent jurisdiction to recover for the department the unpaid share.

1 Section 36. Entry on land -- inspections. Any
 2 employee or agent of the department authorized by the
 3 director may enter upon any land to carry out the purpose of
 4 this act, including, but not limited to, entry to make
 5 inspections the department considers necessary of proposed
 6 works, source of water, location of the proposed use,
 7 construction of works and other inspections to ascertain
 8 whether or not persons are complying with this act. The
 9 department or agent shall give reasonable notice to the
 10 landowner of its intention to enter upon the land. The
 11 department is responsible for actual damages done to any
 12 property.

13 Section 37. Legal assistance. The county attorneys
 14 and the attorney general shall perform such legal services
 15 and bring such legal proceedings in carrying out the
 16 purposes of this act within their respective counties as the
 17 department requests. The department may also employ legal
 18 counsel with the consent of the attorney general to enforce
 19 this act.

20 Section 38. Hearings before board -- judicial review.
 21 (1) A person who is aggrieved by a final decision of the
 22 department, except the department's final determination of
 23 existing rights under section 11, is entitled to a hearing
 24 before the board.

25 (2) The Montana Administrative Procedure Act (title

1 82, chapter 42, R.C.M. 1947) governs hearings before the
 2 department and the board, and judicial review of decisions
 3 of the department or the board under this act.

4 Section 39. Penalties. A person who violates or
 5 refuses or neglects to comply with sections 17(1), 29(1) and
 6 30(3) of this act, or of any order of the department, or of
 7 any rule of the board, is guilty of a misdemeanor, and shall
 8 be fined not less than twenty-five dollars (\$25) nor more
 9 than two hundred fifty dollars (\$250) for each offense.

10 Section 40. Deposit of fees and penalties. All fees
 11 and penalties collected under this act shall be deposited in
 12 the state general fund.

13 Section 41. Sections 89-121 through 89-123, 89-125,
 14 89-801 through 89-819, 89-823 through 89-826, 89-829 through
 15 89-845, 89-847 through 89-855, 89-857 through 89-864,
 16 89-1001 through 89-1024, and 89-2911 through 89-2936, R.C.M.
 17 1947, are repealed.

18 Section 42. This act is effective October 1, 1973.

-End-

COMMITTEE ON NATURAL RESOURCES

FILE NO. SENATE	ENRAGED COM.	OUT OF COM.	DO PASS	DO NOT PASS	LO PASS AS AMENDED	LE CON- CURRED IN	DE CONCURRED IN AS AMENDED	LE NOT CONCURRED IN	
60	1/4	1/13	x						S by G
94	1/11	2/11			x				S by G
108	1/12	2/11		x					Killed
145	1/16	2/11		x					Killed
186	1/18	2/11							HOLD
211	1/19	1/27			x				S by Gov
230	1/19	2/10	x						S by G
231	1/19	2/13		x					Killed
252	1/22								HELD
284	1/22			x					Killed
310	1/22	1/27			x				S by G
337	1/23								S by G
387	1/25								Tr to Jud
401	1/26	2/13							Tr-Hold
404	1/27	2/13	x						Hold
405	1/27	2/8							S by G
426	1/29	2/10	x						Hold
434	1/30	2/13							S by G
444	2/1	2/13			x				Hold
445	2/1	2/3	x						S by G
SJR 23	1/22	2/10			x				S by G
SJR 24	1/22	1/30			x				S by G
443	1/31	2/13	x						S by G

The Seventeenth meeting of the Committee on Natural Resources met in the Highway Auditorium at 10 A.M. on Tuesday, February 13, 1973 to hear Senate Bills, 444 and SJR 39 and SB 445.

A motion was made by Senator Flynn, seconded by Senator McGowan to hold over SB 434. Voted and passed.

A motion by Senator McKeon, seconded by Senator Cochrane to hold over SB 401. Voted and passed.

A motion by Senator McKeon, seconded by Senator Bennett to ~~hold over~~ SB 443.

A motion by Senator McKeon, seconded by Senator McGowan that Senate Bill 404 DO PASS. Voted and passed.

Senate Joint Resolution 39 was explained by Senator Darrow, also Senate Bill 445.

Proponents speaking for SJR 39 were a gentleman who did not give his name, statement attached, as exhibit 1. Mr. George Pike, for the United States Geological Survey, statement attached, exhibit 2.

Senate Bill 444 was explained by Senator McGowan and the proponents on the bill were as follows:

Mr. Fred Caruso, representative of the Montana Water Development Association, statement attached as exhibit 3.

Gary Wicks, Director of Natural Resources and also with the Conservation spoke on the bill listing the need for the state to use its water for beneficial use, and to have it filed to avoid the deadline and the Federal Government stepping in with the water being lost to downstream users.

Senator McOmber, from the Sun River irrigation project felt that the state must pass its water laws or lose its water.

Representative Nichols, District 22 concurred.

Cecil Weeding, member of the Governor's Advisory Council on Water, also spoke as an opponent.

Opponents of the bill were as follows:

W. G. Gilbert, representing several irrigation organizations, a rancher, and an attorney.

James Paugh, Gallatin County Farm Bureau.

Charles Eckles, Fishtail, representing the Stillwater County and Stillwater Farm Bureau.

Pete Zurkey, representing the Stillwater Woolgrower's Association.

Wesley D'Ewart, speaking for himself.

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Conrad B. Fredricks, Big Timber, self.

Carl M. Davis, Dillon, representing Clark Canyon Water Co., East Bench Irrigation District.

Jim Pawl, member of the Gallatin County District and several irrigation ditches and ditch riders.

Jeff Brazier, Western Montana Mining Association.

Ben Berg, Bozeman, representing himself at the request of ditch owners.

Further proponents speaking in support of SB 444 were Hubert White, Montana Water Development Association.

John Morrison, stated 40 million feet of water flowed out of the state to downstream users.

Charlie Bowman, spoke in defense of the commission making up the bill, that it was imperative that something be done or we will lose our water, and that the present records were not adequate to comply with the federal standards.

A motion by Senator McKeon, seconded by Senator McGowan that SB 444 DO PASS. Motion passed, Senator Flynn opposed.

A motion by Senator McKeon, seconded by Senator Cochrane that SB 445 DO PASS, motion passed.

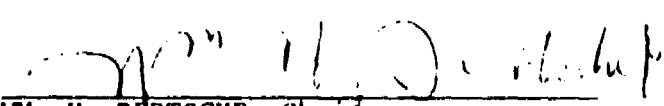
A motion by Senator Cochrane, seconded by Senator McKeon that SJR 39 DO PASS. Motion voted and passed.

A motion by Senator Flynn, seconded by Senator McKeon that SB 108 DO NOT PASS, opposed by Senator Darrow, motion passed.

A motion by Senator McKeon, seconded by Senator Cochrane that SB 145 DO NOT PASS. Motion carried.

A motion by Senator McKeon, seconded by Senator Cochrane that SB 231 DO NOT PASS, voted and passed.

The meeting adjourned.


WM. H. BERTSCHIE, Chairman

SENATE COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 444

Amend on page 1, line 6, by deleting the words and numbers "THROUGH 89-1024"

Further amend on page 1, by deleting line 7 in its entirety and inserting in lieu thereof the following: "89-2911, 89-2912, 89-2913, 89-2915, 89-2917 through 89-2925, 89-2935"

Further amend on page 1, lines 16 through 18, by deleting everything in those lines after the numbers and punctuation "89-864," on line 16, and inserting in lieu thereof the following: "89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R.C.M. 1947; AMENDING SECTIONS 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

Further amend on pages 1 through 30 by striking everything after the enacting clause on page 1, and inserting in lieu thereof the following:

"Section 1. Short title. This act shall be known and may be cited as the "Montana Water Use Act."

Section 2. Declaration of policy and purpose. (1) Pursuant to article IX of the Montana constitution, the legislature declares that any use of water is a public use, and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX, section 3(4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation and future beneficial use and development of Montana's water for the state and its citizens, and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this act to encourage the wise use of the state's water resources by making them available for appropriation

consistent with this act, and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystem. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to article IX, section 1(1) of the Montana constitution, it is further the policy of this state and a purpose of this act to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

Section 5. Definitions. Unless the context requires otherwise, in this act:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other person, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 26.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under

sections 16 through 23.

(8) "Certificate" means the certificate of water right issued by the department under sections 15, 16(5), and 24.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(12) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15.

(13) "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

Section 4. Powers and duties of department. (1) The department shall:

(a) enforce and administer this act and rules adopted by the board under section 5;

(b) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, and proceedings under this act, and prescribe the information to be contained in any application, declaration or other document to be filed with the department under this act;

(c) keep in its Helena office a centralized public record of permits, certificates, declarations, applications, and other documents filed in its office under this act;

(d) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this act.

(2) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this act;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this act.

Section 5. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations;

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

Section 6. Determination of existing rights. (1) The department shall, as soon as practicable, determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is most urgent, and first determine the existing rights in those areas or sources.

Section 7. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. A decree, which is based on evidence introduced and not upon stipulations or admissions of the parties, is determinative of the rights of the parties to it according to its terms; however, the decree is only prima facie evidence of the decreed rights if there are persons who claim rights, by filing declarations under section 8, which were not determined when the source of water was adjudicated. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights;

(2) declarations of existing rights filed under section 8;

(3) records of rights acquired under the groundwater code (sections 89-2911 through 89-2936);

(4) notices of appropriation filed under sections 89-801.2 and 89-810;

(5) records of declarations filed under sections 89-121 and 89-813;

(6) records of statements filed under section 89-907;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes.

Section 8. Declarations of existing rights. (1) The department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within six (6) months after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) A declaration shall be made under oath on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration.

Section 9. Filing of petition. (1) The department shall, within a reasonable time after gathering all data necessary under section 7 of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8. The department shall file the petition in the district court of the judicial district in which the source or area is located.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within ten (10) days of receipt of the notice, the judges of those district courts shall agree on which district judge shall hear the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which the greatest number of persons named in the petition reside.

Section 10. Contents of petition. (1) The petition shall state the names of all persons who have filed declarations under section 8 of this act.

(2) The department shall file with the petition all data gathered under section 7 of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

Section 11. Preliminary decree. (1) Within a reasonable time after the filing of a petition for determination of existing rights, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted with the petition and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 13 of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the preliminary decree may inspect the data upon which the decree is based at any time prior to the expiration of the period allowed for filing objections.

Section 12. Hearing on preliminary decree. (1) The department or a person whose existing rights and priorities are determined in the preliminary decree and who objects to the preliminary decree is entitled to a hearing thereon before the district court

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within sixty (60) days after the effective date of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, as in civil actions, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may

submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing.

Section 13. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the decree shall state:

- (a) the name and post office address of the owner of the right;
- (b) the amount of water included in the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the time during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent

of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree.

Section 14. Appeals from final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as the result of a hearing, at which he appeared, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure. If an appeal is taken from the final decree, water from the source or in the area shall be administered as required by the final decree, pending a decision on the appeal.

Section 15. Certificate of water right. When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of the final decree, issue to each person decreed an existing right a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

Section 16. Right to appropriate -- application for permit. (1) After the effective date of this act and before October 1, 1973, water shall be appropriated in the manner provided by law before the effective date of this act. Within sixty (60) days after October 1, 1973, a person who has made an interim appropriation under this subsection shall obtain a permit from the department. An interim

appropriation is provisional, and issuance of the permit is subject to all provisions of this act.

(2) After the effective date of this act, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(3) After the effective date of this act, and except as otherwise provided in this act, a person may appropriate water only by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater for domestic, agricultural, or livestock purposes by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall

file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed. The date drilling was begun shall determine the priority of the right, as long as the notice of completion was filed in the prescribed period and as long as the well was completed with reasonable diligence. If the notice was not filed in time or the well was not completed with reasonable diligence, the date of filing shall determine the priority of the right.

(6) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with all of the filing requirements of this act to the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation. A person who desires to convert a non-productive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act.

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 5 of this act.

Section 17. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks.

Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 26. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

Section 18. Objections. (1) An objection to an application must be filed by the date specified by the department under section 17(2).

(2) The objection must state the name and address of the objector, and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

Section 19. Hearings on objections. If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one (1) objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

Section 20. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested.

Section 21. Criteria for issuance of permit. The department shall issue a permit if:

- (1) there are unappropriated waters in the source of supply;
- (2) the rights of a prior appropriator will not be adversely affected;
- (3) the proposed means of diversion or construction are adequate;
- (4) the proposed use of water is a beneficial use;
- (5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

Section 22. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the pur-

pose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this act.

(2) The department may limit the time for commencement of the appropriation works, completion of construction and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the permittee.

Section 23. Revocation of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the department may after notice require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

Section 24. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department

may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

(2) A certificate of water right in a particular source may not be issued prior to a general determination under this act of existing rights in that source.

Section 25. Reservoirs. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this act.

Section 26. Reservation of waters. (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 17 through 19. After the hearing provided in section 19, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (a) the purpose of the reservation;
- (b) the need for the reservation;
- (c) the amount of water necessary for the purpose of the reservation;
- (d) that the reservation is in the public interest.

If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall not affect existing rights.

(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the reservation are being met.

Section 27. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this act dates from the filing of an application for a permit with the department, except as otherwise provided in section 16 of this act.

(3) Priority of appropriation perfected before the effective date of this act shall be determined as provided in sections 6 through 15 of this act.

Section 28. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage without receiving prior approval of such change from the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If a person whose rights may be affected files an objection to the proposed change, the department

shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 18(2) of this act, and hearings shall be held in accordance with section 19.

Section 29. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) A copy of an instrument which transfers an interest in an appropriation right shall be filed with the department and the county, in which the point of diversion or place of use is located, by the person receiving the appropriation interest.

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed transfer if the requirements of section 28(2) are met.

Section 30. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right, or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right, or ceases using his appropriation right according to its terms and conditions, for a period of ten (10) successive years, and there was water available for his use, the appropriation right shall be considered to be conclusively abandoned in whole or for the part not used, regardless of whether the appropriator intended abandonment.

(3) This section does not apply to existing rights until they have been determined in accordance with this act.

Section 31. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his

appropriation right under section 30, or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall serve notice requiring the appropriator to show cause at a hearing why his appropriation right should not be declared abandoned. The notice shall include the following information:

- (a) a description of the appropriation right in question;
 - (b) a statement that unless due and sufficient cause is shown the appropriation right will be held to have been abandoned, for specified reasons;
 - (c) the time and place of the hearing.
- (2) The notice shall be served personally upon the appropriator at his last known address at least thirty (30) days before the hearing. The department shall serve the notice by certified mail with return receipt requested if the appropriator lives outside the state. The department shall file in its records proof of service by affidavit along with the return receipt.
- (3) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under section 30 of this act.
- (4) Within sixty (60) days after the hearing, the department shall make an order determining whether the appropriation right shall be held abandoned, and it shall notify the appropriator as to the contents of the order by certified mail.
- (5) The order shall be filed with the district court which issued the final decree establishing the right which is declared abandoned, and the order shall be appended to that final decree. The department shall keep a copy of the order in its office in Helena.

Section 32. Supervision of water distribution. (1) As of the effective date of this act, the district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) Pending a preliminary determination of existing rights, a district court shall supervise those rights by reference to pertinent judicial decrees, records of rights acquired pursuant to the groundwater code (sections 89-2911 through 89-2936, R.C.M. 1947), the findings of water resources surveys, and other pertinent data. If these sources of information are incomplete, existing rights shall be considered to correspond with local usages concerning recognition of water rights.

(3) When a water distribution controversy involving a claimant of an existing right arises upon a source of water in which existing rights have not been determined according to sections 6 through 15 of this act, the department may, in its discretion, or on the petition of one (1) or more of the parties to the controversy, proceed within a reasonable time to determine existing rights in the source, in accordance with this act. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties. The order settling the controversy shall be subject to a subsequent determination of existing rights under this act.

(4) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under this act shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department.

(5) The department shall be named as a party in any proceeding under this section and shall be served with process.

Section 33. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water, or to secure water to a person having a prior right to its use; the department may attach to the controlling works a written notice properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so, and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(2) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

Section 34. Entry on land -- inspections. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

Section 35. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this act. The department may also employ legal counsel to enforce this act and

to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

Section 36. Hearings before board -- Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act.

Section 37. Penalties. A person who violates or refuses or neglects to comply with sections 16(1), 28(1), and 29(3) of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor.

Section 38. Deposit of fees and penalties. All fees and penalties collected under this act shall be deposited in the state general fund.

Section 39. Section 89-1001, R.C.M. 1947, is amended to read as follows:

"89-1001. Appointment of water commissioners -- authority -- compensation. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a final decree ~~or-decrees~~ of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the final decree ~~or-decrees~~, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties bound by the final decree ~~or-decrees~~ the waters to which they are entitled, according to their rights as fixed by such the final decree ~~or-decrees~~, provided that when petitioners make proper showing that they are not able to

obtain the application of the owners of at least fifteen per cent (15 %) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(2)(3) The-state-water-conservation-board department of natural resources and conservation or any person or corporation operating under contract with said-board the department, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(2)(4) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the state-water-conservation-board department of natural resources and conservation under provisions of the state Water Conservation Act, chapter 1 of this Title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be

bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(4)(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of decreed, stored and supplemental waters shall pay their proportionate share of such fees and compensation."

Section 40. Section 89-2911, R.C.M. 1947, is amended to read as follows:

"89-2911. Definitions. As used in this act or regulations, issued hereunder, Unless the context requires otherwise, in this chapter:

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water, beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means any economically or socially justifiable withdrawal or utilization of water, a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the state of Montana or any political subdivision or agency thereof, and the United States or agency thereof, an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(f) "Administrator" means the Montana water resources board, department of natural resources and conservation provided for in title 82A, chapter 15.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to inclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) --"Notice of appropriation" means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate ground water. This form filed alone does not give the appropriator the right to use ground water. It must be followed by a notice of completion to establish a right.

(i) --"Notice of completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (notice of completion of ground water appropriation by means of well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (notice of completion of ground water appropriation without a well).

(j) "Declaration of vested ground water rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966.

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Section 41. Section 89-2915, R.C.M. 1947, is amended to read as follows:

"89-2915. Limiting withdrawals -- hearing and order. (1) At the time set for the hearing the administrator board, if he it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which he the administrator has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the administrator board finds on the basis of the hearing and other information obtained by the administrator that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, he it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The administrator shall have the authority to enforce the order; to require persons to cease such excessive withdrawals in reverse order of their priority of rights; and to bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the administrator board shall be published and mailed by the administrator in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the administrator board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken ~~within the time and in the manner prescribed in section 89-2920.~~

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as

provided in this section, the administrator board shall have authority after notice and hearing as heretofore provided in this section, to modify or revoke his its order upon a showing by any interested party and a finding by the administrator board that conditions have materially changed since the prior order. While a matter is pending before the administrator board, the administrator shall have discretion and authority to restrict further development of the subarea."

Section 42. Section 89-2917, R.C.M. 1947, is amended to read as follows:

"89-2917. Scope of administrative hearing. (1) In any hearing for the ascertainment and finding of priorities to the use of ground water, the administrator in his its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, shall be entitled in such particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. He It may also determine the level below which the ground water shall not be drawn by appropriators. The administrator shall act in administering and enforcing the provisions of the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not ~~made~~ ~~within-the-time-limit-and-otherwise-as-is-~~ ~~provided-in-section-89-2920~~, the order of the administrator shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915."

Section 43. Section 89-2918, R.C.M. 1947, is amended to read as follows:

"89-2918. Permit required to appropriate in controlled area. ~~Persons-desiring~~
~~to appropriate ground water in a controlled area, must file a notice of appropriation~~

stamped-"Permit-Requested,"-and-shall-not-commence-the-drilling-or-excavation-of-a well-until-the-administrator-has-reviewed-the-notice-of-appropriation-and-issued-an order-either-granting-or-denying-the-appropriator-a-permit-to-proceed-with-the appropriation,-by-stamping-the-notice-of-appropriation-"Permit-Granted"-or-"Permit Denied,"-and-affixing-his-signature-thereon.--The-administrator-shall-act-promptly upon-any-such-request. A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the administrator in accordance with the Montana Water Use Act. The administrator shall not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments). The-administrator-shall-cause-a-notice-of-his-order to-be-served-by-mail-on-the-applicant-and-on-each-owner-of-a-decreed-right-to-use ground-water-in-the-particular-ground-water-area-or-subarea-from-which-the-licence is-seught.--Such-order-shall-be-mailed-to-the-applicant-at-the-address-shown-on-the application-and-to-each-such-owner-of-a-decreed-right-at-the-address-shown-on-the administrator's-records.--Service-shall-be-complete-upon-depositing-such-order-in the-post-office,-postage-prepaid,-addressed-to-the-person-on-whom-it-is-to-be-served. Upon-its-mailing,-the-order-shall-be-final-and-conclusive-unless-a-hearing-is-obtained within-the-time-and-in-the-manner-prescribed-in-section-89-2919. "

Section 44. There is a new section 89-2928.1, R.C.M. 1947, which reads as follows:

"89-2929.1. Well Logs. Within sixty (60) days after any well is completed, the driller shall file with the administrator a well log report on a form provided by the administrator at its offices and at the offices of the county clerks and recorders. The administrator may return the report for refiling if it is incomplete or incorrect."

Section 45. There is a new section 89-2934.1, R.C. M. 1947, which reads as follows:

"89-2934.1. Hearings before board -- Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the administrator under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs administrative proceedings under this chapter."

Section 46. Sections 89-121 through 89-123, 89-125, 89-801 through 89-819, 89-823 through 89-826, 89-829 through 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R.C.M. 1947, are repealed.

Section 47. This act is effective on passage and approval."

WATER RIGHTS - RATTLESNAKE CREEK

(Derived in Cause No. 2456, Manning vs. Argenta Ranch, Co., etc.)

Tuesday, February 27, 1973

The Natural Resources Committee met at 7 p.m. at the Highway Auditorium with Chairman Sheldon presiding for a hearing on Senate Bill 444. The room was full of interested people.

Chairman Sheldon stated the proponents would have fifty minutes, the opponents sixty minutes, and then a ten minute rebuttal for the proponents.

Senator McGowan, the chief sponsor, was the first speaker and introduced the following proponent speakers.

Gary Wicks, Director of the Department of Natural Resources and Conservation, was the next speaker. He spoke of the increasing demand for more water in other parts of our nation; of the need to record and centralize the records of the existing water rights to determine the need for our water--for what we can't prove is being put to beneficial use will be considered surplus and given to other users in other states. He stated SB 444 is not going to solve all our problems but is a start in the right direction.

Senator Bill Groff, a representative of the Governor's Water Council, also stated there is a shortage of water in parts of our nation, the aquifer is dropping, and they are looking at Montana's water. Senator Groff stated we do know we have a justifiable claim to our water and have a right to be remunerated for water we ship out.

Senator Harrison, an attorney for the Water Conservation Board, was the next one introduced by Sen. McGowan. He stated he had contributed to this bill and to study that resulted in other such bills. The response has been in the past to delay, study and wait. He stated substantial input into this bill had come from Professor Stone, University of Montana Law School. He mentioned there have been extensions of the "Reservation Doctrine" (right of the Indians to water that flows past them) in parts of the United States. He stated the Yellowstone Basin would be an excellent pilot project. He, also, said there are adequate protections in this bill. He closed his statement by saying Montana has waited long enough for a good water bill.

Cecil Weeding, member of the Governor's Water Council and a director of a soil conservation water district, was the next speaker introduced. He stated he saw many problems developing and we must protect our water as it is our life blood and a dear and coveted commodity particularly now with industry also laying claim to it. He said much time, thought, and effort has gone into preparing this bill; water laws of other states have been studied and public hearings were held where planning drafts were heard and discussed. He said the drafted bill carries over existing water rights and affords protection to all interests in water.

Hubert White, past president of Montana Water Development Association, and associated with the Water Advisory Council, was the next speaker. He stated he had long been interested in saving water for the use of Montana. He stated this is not a perfect bill and there are a lot of amendments suggested; but, due to lack of time to study further, he felt

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Cause No. 2456, Manning vs. Argenta Ranch, Co. etc.)

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the bill should be passed now and rectify if necessary in ten months when the legislature reconvenes. He felt it was essential we establish the rights to our water as soon as possible--and the only way to do that is have plenty of water rights on record.

Senator McOmber was the next speaker. He stated he represented four agricultural, water-using counties. He stated under the new constitution a central system of filing is a mandate. He stated he felt Montanans value their water too cheaply having taken it from the Indians for free. Now, he said, someone is trying to take it from us --and to keep the thirsty southern down-streamers from succeeding we have to have laws that record our water rights. He said it was a political fact of life that the southern states will get some consideration; but the federal laws have given us an opportunity to reserve; and, if we don't reserve, the water will be up for grabs by other states.

Henry Loble, an attorney, said he was representing himself. He stated there was a pressing need for a new water law. He said he had practiced water law for many years and tried many water suits. He stated this was a legal bill and one that requires study and analysis. He said the original bill was substantially changed in the Senate, and there are things in the bill with which he does not entirely agree. But he stated he felt it was possible the contending parties can get together and come up with a decent water bill. He said there were three main points to be decided: questions of existing rights, questions of who would establish a permit system for future rights, and the question of how to administer the water rights in distributing and regulate. But he felt that these things could be resolved--a harder thing to resolve would be to obtain the state money that would be needed to finance this department. He felt a solution might be a subcommittee and he said he would be glad to help the subcommittee if they so wished.

Fred Caruso, Montana Water Development Association, was the next speaker. His testimony is exhibit 1. Attached to his testimony are recommended amendments prepared by G. W. Gilbert.

Grace Edwards, League of Women Voters, was the next speaker. Since there was a shortage of time she passed copies of her testimony to the members rather than read it. A copy of this is exhibit 2.

Signing as favoring SB 444 was Pat Antonick, Sierra Club, Montana Groups.

The first of the opponent speakers was W. G. Gilbert, Dillon attorney. He stated in his area are many water decrees dating from 1862 and even earlier for use rights. He said the people involved were scared to death of this bill as it would require the people who own the water rights to get into water suits and readjudicate their water rights. The reason for this, he stated, was because the bill gives to the Water Resources Board the right to call in proof of a water right. He further stated a law to call in proof of water rights by a state engineer has been on the books since 1939, but nothing has been done perhaps because of money. This same state engineer could adjudicate any water stream where the water rights were in question--under this bill the Natural Resources Dept. would have this power. Mr. Gilbert stated that he had some suggested amendments and these are attached to Mr. Caruso's testimony which is exhibit 1.

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Case No. 2456. Hanning vs. Argenta Ranch, Co., etc.)

Tuesday, February 27, 1973 -Page 3

Carl Davis, Clark Canyon Water Co., passed out copies of decreed water rights lists from the Beaverhead and Red Rock Rivers and from streams in Beaverhead County and Rattlesnake Creek. These are exhibit 3. He said the Water Resources Survey had done an excellent piece of work in three counties recording these rights. He felt the system now working was in the best interests of the state. He had a couple of suggested amendments: section 8, subsection (2), there should be a reference to a copy of the decree; and in section 39, subsection (1), the word "final" should be removed; and he didn't like subsection (3) of that section.

Mr. Berg, Bozeman, stated he was speaking at the request of several different canal companies, who owned a considerable part of decreed water. He felt the state was undertaking a monumental task. He feared because the burden of proof was on the water user they would be very involved in law suits over the adjudication of water. He, also, questioned the one reference to reservoirs and the fact a person intending to appropriate water for this purpose must have a permit. He felt this would discourage the conservation of water at the head of streams. He felt there were many things in this act needing careful attention and he questioned if it had had it. Mr. Berg left a list of water decrees for the West Gallatin in which he had checked the canal and ditch companies. This is exhibit 4.

Senator Boylan felt caution was needed. He asked the people in the room who had water rights and were scared to raise their hands. There were many who did. He felt this bill should be held over to 1974.

Everett Snortland, Montana Farm Bureau, stated he felt this act as it passed the Senate would allow open season on all the water rights. He stated he supported Mr. Gilbert and his amendments.

The next speaker was Jim Paugh, representing two Gallatin County irrigation canals. His written testimony is exhibit 5.

Mons Teigen, Montana Stockgrowers Association, stated his association had reviewed Mr. Gilbert's amendments and supported them.

Vernon L. Westlake, Bozeman, was the next speaker. His written testimony is exhibit 6.

Bill Garrison stated at this time the people who live and use water in his area (Ruby, Beaverhead, Jefferson, Madison) are scared to death of the bill.

Wesley D'Ewart, Farm Bureau, stated that several years ago the legislature passed a law that water rights were to be recorded and mapped; and ever since the legislature has appropriated money to do this centralized filing.

Jeff Brazier, Western Montana Mining Association, presented several suggested amendments to protect the miners that may have had miners water rights; but due to lack of profit may abandon the mine and water rights but later when the mineral can be profitably mined again may want the rights.

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Cause No. 2150, Manning vs. Argenta Ranch, Co. etc.)

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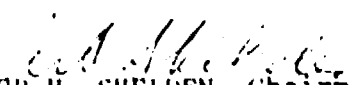
Mr. Garrison spoke again. He said the Big Hole River did not have decreed rights, but the seven wide creeks leading into the river are decreed; and the residents along these creeks are very concerned that the law stays the way it is.

Senator McGowan was the first proponent rebuttal speaker. He warned that unless we resolve the problems and come up with something, water rights won't be worth the paper they are written on. He said there are at least ten plans from out-of-state to use Montana's water.

Charles Bowan, was the next rebuttal speaker, and stated there are three different sets of rights: existing decreed, filed and adjudicated, and use rights. He said things change and the lists of water rights presented earlier were only good when they were published. On mining claims--he stated theirs was a non-consumptive use and should be permitted; while agriculture is consumptive with a good percentage used. He compared Mr. Gilbert's amendments with those proposed by the Department of Natural Resources and he stated there was much duplication and felt a good subcommittee could pull them together in good form. He, also, brought up a case where the miners inches decreed far exceeded a stream's potential--so a record is needed to adjust water rights, too.

Chairman Sheldon opened the meeting to questions from the committee. There were none so the meeting adjourned at 9:30 p.m.

Respectfully submitted,


ARTHUR H. SHELDEN, Chairman-

eas

WATER RIGHTS - RATTLESNAKE CREEK

(Derived in Cause No. 2156, Manning vs. Argentina Ranch, Inc. etc.)

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Helena, MT

Tuesday, February 27, 1973

STATEMENT IN SUPPORT OF S.B. 444 WITH ATTACHED AMENDMENTS
INCORPORATED INTO TEXT OF BLUE COPY OF BILL.....

Mr. Chairman and Members of the Committee:

The Montana Water Development Association supports the concepts presented in Senate Bill 444. We particularly support the concepts of centralized filing of water rights and the identification of water rights and actual water use.

We supported S.B. 444 in the Senate, almost "sight-unseen," with the reservation that we would ask our membership to view this bill with a critical eye and to make recommendations for possible improvements to be presented to this Committee of the House. We did so, and tonight we propose a set of amendments.

We support the amended S.B. 444 WITH THESE AMENDMENTS and other housekeeping amendments which may be required to make the bill workable.

The blue copy of S.B. 444 and these amendments were carefully reviewed by our association, with the able assistance of four attorneys, two of whom have over 30 years experience each in water law and who are well known for their work in this field. Our approval of the bill with these amendments was almost unanimous.

Mr. Chairman, with your permission, I would like to relinquish any further time I may have to Mr. G.W. Gilbert of Dillon, who is the primary author of these amendments. He is far better able to explain these important amendments than I.

In conclusion, the Montana Water Development Association approves of S.B. 444 with these amendments, but must again reserve final approval of the measure until the fully amended bill can be read in its entirety.

Thank you for your consideration.

/s/ FRED CARUSO
Legislative Coordinator

WATER RIGHTS -- RATTLESNAKE CREEK

(Deferred in Cause No. 2134, Hanning vs. Argenta Ranch, (a. etc.)

Amendments Supported by the:
MONTANA WATER DEVELOPMENT ASSOCIATION
Presented by C.W. Gilbert, 2/27/73

PROPOSALS FOR CHANGES TO SENATE BILL 444 AS AMENDED**

Section 3. Definitions. Amend to read---

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, ~~or-in-the-case-of-a-public-agency-to-reserve water-in-accordance-with-section-26.~~

Section 5. Powers and duties of board. Amend to read---

(2) (c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, ~~and-to file-reports-on-appropriations;~~

Section 6. Amend to read (Substitute)---

Section 6. Establishment of a system of centralized records of existing water rights. (1) The department shall, as soon as practical, establish a centralized record system of all rights existing on the effective date of this act to be the use of any waters of the state for a beneficial use. To accomplish this, the department shall gather data essential to the proper understanding and identification of those existing rights.

(2) The department may select and specify areas or sources where the need for ~~a-determination~~ an identification of existing rights is most urgent, and first ~~determine-identify~~ the existing rights in those areas or sources.

Section 7. Amend to read--Data for determination identification of existing rights. The data gathered by the department for the determination identification of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. A decree, ~~which-is-based-on-evidence-introduced and-not-upon-stipulations-or-admissions-of-the-parties,~~ is determinative of the rights of the parties to it according to its terms; however, the decree is only
**Other "house-keeping" amendments may be necessary to make the bill workable.

WATER RIGHTS - RATTLESNAKE CREEK

(Referred in Case No. 2134, Hanning vs. Argenta March 6th, etc.)

PROPOSED AMENDMENTS TO S.B. 444
HMDA/C.W. Gilbert/2-27-73

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priorities existing in the rights to the use of the waters of such area or source,
the department shall commence an action in the appropriate District Court having
jurisdiction to adjudicate the waters of such area or such source. All claimants
of rights to the use of waters from such source as determined by the department
following the procedure provided for by Sections 6, 7, 8 and 9 of this act shall be
joined as defendants to such action. The complaint in such action shall seek the
adjudication of the waters of such specified area or of such specified source.

Section 11. Delete.

Section 12. Delete.

Section 13. Delete.

Section 14. Delete.

Section 15. Amend to read---

Section 15. Certificate of water right. ~~When a final decree is entered, the~~
~~court shall send a copy to the department. The department shall, on the basis of~~
Certified copies of the decrees of the various District Courts of the State of
Montana, or any U.S. Court having jurisdiction to determine water rights by
adjudication, rendered after the effective date of this act and adjudicating the
rights to the beneficial use of any of the waters of this state shall be filed with
the department. The department shall, on the basis of the such final decree, issue
to each person decreed an existing right by such decree a certificate of water
right. The original of the certificate shall be sent to the county clerk and
recorder, in the county where the point of diversion or place of use is located,
for recordation. The department shall keep a copy of the certificate in its office
in Helena. After recordation, the clerk and recorder shall send the certificate
to the person to whom the right is decreed.

Section 17. Notice of application. Amend (1) to read---(1) Upon receipt of
a proper application for a permit, the department shall prepare a notice containing
the facts pertinent to the application and shall publish the notice in a newspaper
of general circulation in the area of the source once a week for three (3)

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Case No. 3444, Banning vs. Argenta Ranch, (a. etc.)

ED AMENDMENTS TO S.B. 444
W. Gilbert/2-27-73

Page 4

ative weeks. Before the last date of publication, the department shall also
the notice by certified mail upon an appropriator of water or applicant for or
of a permit who, according to the records of the department, may be affected
proposed appropriation. ~~A notice shall also be served upon any public agency~~
~~as reserved waters in the source under section 26.~~ The department may, in its
tion, also serve notice upon any state agency or other persons the department
may be interested in or affected by the proposed appropriation. The department
file in its records proof of service by affidavit of the publisher in the case
ice by publication, and by its own affidavit in the case of service by mail.

Section 26. Delete. (Reservation of Waters Section)

Section 29. Transfer of appropriation right. Amend (3) to read---

(3) An appropriator holding a permit or certificate issued by the department
et sever all or any part of an appropriation right from the land to which it
urtenant, or sell the appropriation right for other purposes or to other lands,
the appropriation right appurtenant to other lands, without obtaining prior
val from the department. The department shall approve the proposed transfer if
requirements of section 28(2) are met.

Section 32. Supervision of water distribution.

(2) Delete.

Amend (3) to read---

(3) When a water distribution controversy involving a claimant of an existing
arises upon a source of water in which existing rights have not been determined
~~according to section 6 through 15 of this act,~~ previously determined by adjudication,
the department may, in its discretion, ~~or on the petition of one (1) or more of the~~
~~parties to the controversy,~~ proceed within a reasonable time to determine initiate
proceedings to adjudicate existing rights in the source, in accordance with this
act. ~~If the department does not proceed to obtain a determination of existing~~
~~rights, the district court shall settle only the controversy between the parties~~
~~The order settling the controversy shall be subject to subsequent determination of~~

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Cause No. 2436, Manning vs. Argenta Ranch, (a. etc.)

PROPOSED AMENDMENTS TO S.B. 444
MADA/G.W. Gilbert/2-27-73

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~~existing-rights-under-this-act.~~

(4) Delete and substitute to read---

(4) Any controversy between claimants of rights to use the waters of this state shall be determined by a court of competent jurisdiction.

Section 34. Entry on land--inspections. Amend to read---

Any employee or agent of the department authorized by the director may with the permission of the person lawfully in possession thereof enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property. In the event permission to enter upon such land is refused the department shall be authorized to seek court authority for such entry by appropriate legal procedure.

Section 35. Legal assistance. Delete (1)

Section 36. Hearings before board---Administrative Procedure Act. Amend to read---

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act provided expressly, however, that appeal from the administrative decision by an aggrieved party shall entitle such party to a trial de novo before the district court having jurisdiction of the matter.

Section 38. Deposit of fees and penalties. Amend to read---

All fees and penalties paid to the department or collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of any of the provisions of this act shall be deposited with the County Treasurer of the county wherein said court presides and shall be disposed of in the same manner as any other penalty or fine.

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Case No. 2456, Manning vs. Argentin Ranch, Co., etc.)

PROPOSED AMENDMENTS TO S.B. 444
NWDA/G.W. Gilbert/2-27-73

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Section 39. Amend (2) to read---

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree, the judge of the district court which issued the final decree shall may upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

Section 44. Amend to read---

Section 44....

89-2928.1. Well logs. Within sixty (60) days after any well is completed, the driller shall file with the administrator a well log report on a form provided by the administrator at its offices and at the offices of the county clerks and recorders. The administrator may return the report for refiling if it is incomplete or incorrect. The administrator shall provide a copy of the complete and correct well log to the Montana Bureau of Mines and Geology.

Reproduced and distributed by:

.. MTANA WATER DEVELOPMENT ASSOCIATION
P.O. Box 162, Helena, Montana 59601
Gibson G. Goodman, Secretary-Treasurer

WATER RIGHTS - RATTLESNAKE CREEK

(Derived in Cause No. 2454, Hanning vs. Argenta Ranch, Co., etc.)

MONTANA WATER DEVELOPMENT ASSOCIATION INFORMATION SHEET

P.O. Box 162, Helena, Montana 59601 (406) 442-7361

Origin of MWDA:

The Montana Water Development Association was organized as a non-profit, non-agency, voluntary association of water users in 1966 with the merger of the Montana Reclamation Association and the Montana Water Users Association. The history of these two organizations dates back as far as the late 1930's.

The Principal Aims and Interests of MWDA Are To:

- ...protect and develop the water resources of Montana for the benefit of the citizens of the state of Montana.
- ...protect Montana's individual and state water rights.
- ...provide its membership with an open forum for discussion and decision on questions dealing with proposals for development within all stream basins in Montana.
- ...participate with local, state and federal agencies and other organizations in planning for the multi-purpose development of the land and water resources of our state.
- ...sponsor conferences and meetings where fair and full discussion of questions involving sound water conservation and irrigation practices may be disseminated.
- ...promote state and federal legislation of particular importance to state water interests.
- ...provide the state's share of the National Water Resources Association's budget for securing broad support for our reclamation projects.

Who Belongs to MWDA?

Irrigators, ranchers, dry-land farmers, bankers, lumbermen, well drillers, chambers of commerce, large and small industries, irrigation districts, attorneys, professors, private individuals...anyone or any business concerned with the sound development of our natural resources, the preservation and protection of our water rights, or the development of specific water projects. Our membership is extremely diverse with representatives from all groups...and the membership is growing rapidly.

MWDA Programs:

The Montana Water Development Association has initiated a strong statewide "Keyman" Program designed to facilitate communications between various governmental agencies, the officers of MWDA and key members, and members at the local community level. Keymen were selected for their interest and willingness to respond to communications which may from time to time ask them to alert their neighbors of key issues in water development.

In addition, MWDA is engaged in an active and continuous publicity program to stimulate an awareness of the need for sound, total-water planning throughout the entire state.

MWDA members receive the National Water Resources Association News, called "Water Life," each month, and also the Montana Water Development Association Report. Many special bulletins, publications, charts and fact sheets are available to MWDA members, free or at nominal cost.

An annual convention is held in different sites throughout the state and national authorities on water attend to speak. At our annual convention, the membership becomes actively involved in the development of policy through the writing of resolutions designed to guide the organization throughout the year.

It is our belief that a well-informed, involved membership is a strong membership.

WATER RIGHTS - RATTLESNAKE CREEK

MWDA Data Sheet

Side #2

MWDA Membership Profile:

MWDA is financed entirely by the voluntary membership contributions of individuals, irrigation districts, small businesses and industrial firms. MWDA does not receive or seek the financial support of any governmental agency. Our 1972 budget was received in approximately the following ratio: Individual membership contributions, 91; irrigation districts, 25; small businesses and banking institutions, 28; rural electric and telephone cooperatives, 6; industrial and manufacturing firms (including the railroads), 27; and miscellaneous organizations (such as chambers of commerce), 5.

Our irrigation district members, over 60 in total, represents hundreds of thousands of acres of irrigated farm land and hundreds of farmers who work the soil. These farmers are automatically members of MWDA and the National and are not counted as separate individual members. More than 125 individuals not represented by businesses or irrigation districts are members of MWDA.

Officers and Directors:

The following are the officers and directors of MWDA for 1973 with their occupations listed:

President: D. Keith Williams, Billings--agriculture and real estate rep., industry

Vice Pres: Allen Kolstad, Chester--farmer, rancher, legislator

Vice Pres: Frank Crisafulli, Glendive--inventor, manufacturer of agri. equipment

Sec.-Treas: Gibson G. Goodman, Helena--feed and grain dealer, farmer, rancher

NWRA Director: Hubert G. White, Townsend--lumberman, rancher

NWRA Director Emeritus: Wesley A. D'Ewart, Wilsall--retired rancher, former U.S. Congressman

Director: John Baucus, Helena--rancher

" Jerry Bryson, Billings--agricultural representative, railroad

" W.L. Current, Shelby--rural electric coop manager

" M.E. Eddleman, Worden--farmer, rancher

" Mark Etchart, Glasgow--farmer, rancher

" D.P. Fabrick, Choteau--retired rancher

" Dr. Sid Groff, Butte--geologist, professor

" Joe Helle, Dillon--farmer, rancher

" Dr. Helmer Holje, Bozeman--hydrologist, professor

" Al Kersich, Billings--civil engineer, consultant

" Robert Lee, Fairfield--irrigation district director, farmer

" Gordon McGowan, Highwood--farmer, legislator

" Marvin McMichael, Missoula--industry

" Bruce MacLay, Florence--farmer, rancher

" Herb Mobley, Ashland--farmer, rancher

" John Morrison, Helena--civil engineer, consultant

" George Pehl, Whitehall--farm implement dealer

" Eugene Phillips, Kalispell--lawyer

" Harold Zent, Hysham--farmer, rancher

Affiliations:

MWDA is affiliated with the National Water Resources Association, 897 National Press Building, Washington, D.C. 20004, and has been active in the Upper Missouri Water Users Association over the years. Both of these organizations hold annual conventions in the western states and are attended by MWDA members.



WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Cause No. 2136, Hanning vs. Argenta Ranch, Co., etc.)

LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony prepared for the 43rd Legislative Assembly - 1973

The League of Women Voters of Montana supports SB 444 as currently written. We commend the Water Law Advisory Council and the Department of Natural Resources for their work in drafting the bill and holding the series of public hearings prior to the legislature.

We strongly urge the Natural Resources Committee "do pass" the bill as now written. Amendments were made in response to hearings with the result that district courts rather than the department are relied upon for determination and adjudication of existing water rights and current rights disputes. As required by the 1972 Constitution, existing water rights are guaranteed protection.

We particularly urge you to retain the following provisions:

1. The permit system for future water rights. This will prevent speculative and unrealistic filings and give the state some procedures to minimize future conflicts between users of water. Water has sparked notorious hassles in the past, but if nothing is done, these could be small spats compared to future spiraling demands and consequent conflicts. We believe the permit system is vitally needed, and according to Mr. Wicks, similar systems are used and working in almost all the other western states.
2. The time is now to finally recognize recreation as one of the beneficial uses of water.
3. The reservation of water by public units of government for maintenance of water quality and minimum stream flow. We see the need for protection of in-stream waters as the greatest single future problem. Again, existing rights are guaranteed. This provision only applies to currently unappropriated waters. It may be used only by governmental units and then subject to permit and certification procedures, the same as any other beneficial use.

We also support centralized filing of water rights, as also required by the new Constitution. Montana in many areas does not know who's using water, how much is used, or who's entitled to it.

We approve the provision regarding transfer of water rights, to make sure that transfers, especially from one type of use to another, do not exceed actual use rights. We feel this is particularly necessary to eastern Montana, where agricultural water rights may be bought up and used for year-round industrial purposes.

The bill right now is a reasonable bill that can be supported by industry, agriculture, municipalities, conservationists, and recreationists. We feel it strikes a balance between users and sets up fair procedures for handling any conflicts. We urge passage without further amendment.

WATER RIGHTS - RATTLESNAKE CREEK

(Derived in Case No. 2455, Banning vs. Argenta Ranch, Co., etc.)

NAME	AMOUNT INCHES	TOTAL INCHES TO DATE	DATE OF RIGHT	PRESENT OWNER
Wood L. S. Co.	$\frac{1}{4}$ of 75		June 1, 1865	City of Dillon
Rife Ranch Co.	$\frac{3}{4}$ of 75		June 1, 1865	Hans Dons
Fredricka Cushing	$\frac{3}{4}$ of 75	75	June 1, 1865	Circle S Ranch - Ivan Remley
City of Dillon	40	115	May 31, 1868	City of Dillon
City of Dillon	30	145	June 1, 1868	City of Dillon
Margaret A. Greaser	75		July 6, 1870	John Hand
Argenta Townsite	40	260	July 6, 1870	Argenta Townsite
Wood L. S. Co.	$\frac{1}{4}$ of 75		June 1, 1871	Berg Christensen Co.
Rife Ranch Co.	$\frac{3}{4}$ of 75		June 1, 1871	Hans Dons
Fredricka Cushing	$\frac{3}{4}$ of 75	315	June 1, 1871	Circle S Ranch - Ivan Remley
Rattlesnake L. S. Co.	$\frac{1}{2}$ of 300		June 1, 1875	Joe Carroll
Rife Ranch Co.	$\frac{3}{16}$ of 300		June 1, 1875	Hans Dons
Fredricka Cushing	$\frac{3}{16}$ of 300		June 1, 1875	Circle S Ranch - Ivan Remley
Wood L. S. Co.	$\frac{1}{2}$ of 300	615	June 1, 1875	Berg Christensen Co.
John Hull	150		June 1, 1877	Nicholas & Roberts
John Loden	150	935	June 1, 1877	John Loden
S. A. Benning	25		June 1, 1879	Joe Carroll
Rattlesnake L. S. Co.	5		June 1, 1879	Joe Carroll
Wood L. S. Co.	$\frac{1}{4}$ of 180		June 1, 1879	Berg Christensen Co.
State Bk (Rife)	235		June 1, 1879	Berg Christensen Co.
Rife Ranch Co.	$\frac{3}{4}$ of 180		June 1, 1879	Hans Dons
Fredricka Cushing	$\frac{3}{4}$ of 180	1380	June 1, 1879	Circle S Ranch - Ivan Remley
Elza Smith	353		June 1, 1880	George Webster (222) Joe Carroll (111)
Wood L. S. Co.	$\frac{1}{4}$ of 20		June 1, 1880	Berg Christensen Co.
Rife Ranch Co.	$\frac{3}{4}$ of 20		June 1, 1880	Hans Dons
Fredricka Cushing	$\frac{3}{4}$ of 20	1733	June 1, 1880	Circle S Ranch - Ivan Remley
S. A. Banning	61		June 1, 1881	Joe Carroll
Rattlesnake L. S. Co.	339	2133	June 1, 1881	Joe Carroll
S. A. Banning	39		June 1, 1882	Joe Carroll
Rattlesnake L. S. Co.	215		June 1, 1882	Joe Carroll
Wood L. S. Co.	$\frac{1}{4}$ of 332		June 1, 1882	Berg Christensen Co.
Albers	60		June 1, 1882	Herman Peterson
Rife Ranch Co.	$\frac{3}{4}$ of 332		June 1, 1882	Hans Dons
Fredricka Cushing	$\frac{3}{4}$ of 332	2779	June 1, 1882	Circle S Ranch - Ivan Remley
S. A. Banning	55		June 1, 1884	Joe Carroll
Rattlesnake L. S. Co.	161	2995	June 1, 1884	Joe Carroll
Wood L. S. Co.	$\frac{1}{4}$ of 225		June 1, 1886	Berg Christensen Co.
Wood L. S. Co.	$\frac{1}{4}$ of 175		June 1, 1886	Berg Christensen Co.
Rife Ranch Co.	$\frac{3}{4}$ of 225		June 1, 1886	Hans Dons
Rife Ranch Co.	$\frac{3}{4}$ of 175		June 1, 1886	Hans Dons
Pearl Cornett	200		June 1, 1886	Berg Christensen Co.
Fredricka Cushing	$\frac{3}{4}$ of 225		June 1, 1886	Circle S Ranch - Ivan Remley
Fredricka Cushing	$\frac{3}{4}$ of 175	3595	June 1, 1886	Circle S Ranch - Ivan Remley
Rattlesnake L. S. Co.	10	3635	June 1, 1887	Joe Carroll
Ida M. Slack (Argenta Ranch Co.)	40		June 20, 1887	Hans Dons
Wood L. S. Co.	140		June 20, 1887	Berg Christensen Co.
State Bank (Rife)	300	4115	June 20, 1887	Berg Christensen Co.
Edward C. Smith	150		July 20, 1887	N. Downing
Ida Slack (Argenta R)	75		July 20, 1887	Hans Dons
Wood L. S. Co.	80		July 20, 1887	Berg Christensen Co.
State Bank (Rife)	75	4495	July 20, 1887	Berg Christensen Co.
Wood L. S. Co.	20	4515	June 1, 1889	Berg Christensen Co.
Wood L. S. Co.	90	4605	Feb. 8, 1892	Berg Christensen Co.
Bonneview Res. Co. (Minneopa Lake)	751 Acre Ft.		August 1, 1894	

WATER RIGHTS - RATTLESNAKE CREEK

(Decreed in Cause No. 2484, Hanning vs. Argenta Ranch Co., etc.)

NAME	AMOUNT INCHES	TOTAL INCHES TO DATE	DATE OF RIGHT	PRESENT OWNER
Bonneview Res. Co. (Boatman Reservoir)	518 Acre Ft.		June 18, 1897	
Bonneview Res. Co. (Tent Lake Res.)	750 Acre Ft.		Sept. 3, 1901	
Wood Live S. Co.	150	1755	May 1, 1902	
Bonneview Res. Co. (Harris Lake Res.)	260 Acre Ft.		July 30, 1903	
Rattlesnake Res. Co. (Esler Lake Res.)	20000 Acre Ft.		Sept. 15, 1903	
Mabel W. Thompson	272		June 1, 1905	
Mabel W. Thompson	272		June 1, 1905	
Henry Van Kleeck (Baxon Creek)	350		June 1, 1905	
Henry Van Kleeck	75		June 1, 1905	
H. J. Thompson	278		June 1, 1905	
H. J. Thompson	50	6052	June 1, 1905	
Bonneview Res. Co. (Rim Res.)	3000 Acre Ft.		Oct. 4, 1906	
Argenta Ranch Co.	800	6852	Feb. 9, 1910	
Argenta Ranch Co.	2/3 Kelly Res.			
C. W. Scott	1/3 3000 Acre Ft.		May 27, 1911	
C. W. Scott	680	7532	June 5, 1915	
Total Stream rights decreed on Rattlesnake Creek			7532 Miners' Inches	

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List of Decreed Water Rights from Beaverhead and Red Rock Rivers

As of Date August 1, 1926

(This list has been compiled from data which we believe to be reliable.)

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1865

828	Robt. H. Selway, James Selway	March 15,	250	Jos. Butala, 125 in. Julia Selway, 125 in.
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"Selway Ditch" from East Side of Blacktail Creek.

828	Wm. Mauldin,	October 15,	118	Geo. R. Featherly
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"Wm. Stodden Ditch" from Beaverhead River.

1866

1053	Washington Nyhart, Wm. Linder Est.	May 1,	50	Nyhart Est. 25 in. Co-op Ditch, 25 in.
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Nyhart Estate right through "Nyhart Ditch" out of West Side of Beaverhead River.

Present owners of "Co-op Ditch" as follows:

F. P. Birrer 3/10, A. Linder 2/10, Mose Smythe 2/10,

Mike Rebich 2/10, Jordon Nyhart 1/10.

1053	Frank Swartz, et al.,	May 1,	105	Darnutzer Bros
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"Island Ditch" out of East Side of Beaverhead River.

1053	J. F. Bishop	May 15,	125	Anderson Bros.
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"Johnson Ditch" out of East Side of Beaverhead River.

1053	Thorpe Livestock Co.	May 31,	246	Wm. Kennison, 126 in. Hans Henningson, 120 in.
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"Haystack Ditch" No. 2 conveys Kennison Right.

"Haystack Ditch" No. 1 conveys Henningson Right.

Both ditches taken out of East Side of Beaverhead River.

1053	Frank Swartz, et al.,	July 1,	300	Darnutzer Bros., 243 in. Co-op Ditch, 57 in.
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Darnutzer Bros. right taken through "Island Ditch".

828 1258	Lawrence A. Brown	August 1,	50	Graeter Electric Co. or Walter Taylor
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"Old Ryan Ditch" out of West Side of Beaverhead River.

1867

1053	W. B. Carter	May 1,	200	Carter L. S. Co.
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"Old Carter Ditch" out of East Side of Stodden Slough,
a tributary of Beaverhead River.

1053	Mercer Estate Elling Est. Brooks Est.	June 1,	532	Allen Nichols Albert Smith Mont. T. & S. Bk.
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"Mule Shoe Ditch" out of East Side of Beaverhead River.

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1868

828	Rose Heavey		150	Rose Heavey
	"Canyon Ditch" out of East Side of Beaverhead River.			
828	Canyon Ditch Co.		210	Canyon Ditch Co.
	Diverted through "Canyon Ditch".			
1053	John Morgan John Sidensticker,	April 1.	150	Mont. T. & S. Bk. ¹ Mrs. Sidensticker ¹
	"Jones Ditch" out of West Side of Beaverhead River.			
1053	W. B. Carter,	August 1.	1000	Carter L. S. Co.
	"Carter River Ditch" out of East Side of Beaverhead River. "High Water Right"			

1869

1053	Palmer and Elizabeth Baker	October 1.	288	F. P. Birrer .2 Mike Robich .4 Wilcomb Place .4 Swanstrum .1 Edwards .1
	"Baker Ditch" out of West Side of Beaverhead River.			

1870

1053	W. B. Carter,	April 1.	360	Carter L. S. Co.
	"Davis Slough Ditch" out of East Side of Stodden Slough, a tributary of Beaverhead River.			
1053	Peder Jensen,	May 1.	160	Anderson Bros.
	"Johnson Ditch" out of slough tributary to Beaverhead River.			
1053	John F. Bishop	May 1.	200	Anderson Bros.
	"Johnson Ditch"			
1053	Gerhardt Albers,	May 1.	200	John Albers
	"Saxon Ditch No. 1" out of Albers Slough, a tributary of Beaverhead River.			
1053	Gerhardt Albers,	May 1.	160	John Albers
	"Hill Ditch" out of Albers Slough, a tributary of Beaverhead River.			
1053	O. F. Gammell Wm. Stewart,	May 1.	240	Albert Smith ¹ Frank Lawyer ¹
	"McKinney Ditch" out of West Side of Beaverhead River.			
1053	Est. of Wm. Linder	May 10,	135	Co-op Ditch
1053	Washington Nyhart	May 12,	135	Nyhart Estate
	"Nyhart Ditch" out of West Side of Beaverhead River.			
828	Jos. Shinebenger	August 31,	50	E. B. Roe
	"Ditch No. 1" Red Rock River.			

1872

1053	W. B. Carter	May 1.	100	Carter L. S. Co.
	"Davis River Ditch" out of East Side of Beaverhead River. "High Water Right"			

CASE	PERSON DECREEED TO	DATE	INCHES	PRESENT OWNER
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(1872 Continued)

1053	James Mauldin,	May 1,	250	W. A. Staudemeyer
	"Brown Ditch" out of East Side of Beaverhead River.			
1053	Carl Swanstrum	May 10,	108	Co-op Ditch
1053	J. F. Bishop,	May 15,	160	Anderson Bros.
	"Johnson Ditch" out of slough tributary to Beaverhead River.			

1873

828	Arthur Sullivan,	April 31,	312	Mike Howe 192 in. Frank Lakner 120 in.
	"Slough Ditch" out of Beaverhead River.			
1053	Thorpe L. S. Co.	May 1,	500	St Bank Dillon 300 in. John Keenan 200 in.
	State Bank of Dillon right through the "Upper River Ditch" and Keenan right through "Keenan Ditch"; both ditches out of East Side of Beaverhead River.			
1053	O. F. Gammel	July 1,	5	Baker Ditch
	(For Owners of "Baker Ditch" see page two hereof.)			
1053	Frank Swartz,	July 1,	120	Co-op Ditch
1053	Palmer and Elizabeth Baker	July 1,	112	Baker Ditch

1875

1053	John Morgan John Seidensticker	May 1,	100	Mont. T. & S. Bk. 1/2 Mrs. Seidensticker 1/2
	"Jones Ditch" out of Beaverhead River.			
1053	James Mauldin,	October 15,	501	W. A. Staudemeyer
	"Big Slough Ditch" out of Albers Slough.			

1876

1053	Peder Jensen,	May 1,	288	Anderson Bros.
	"Selway Ditch" out of West Side of Beaverhead River.			
1053	Gerhardt Albers,	May 1,	400	John Albers
	"Saxton Ditch No. 2" out of Albers Slough.			
1053	Wm. Stewart, Almond J. Wilcomb	May 1,	317	Baker Ditch
828	Blivens L. S. Co.	August 1,	318	Chas. Meine
	"Billy Woods Ditch" out of West Side of Beaverhead River.			

1877

1053	Gerhardt Albers,	August 1,	300	John Albers
	"Albers River Ditch" out of West Side of Beaverhead River.			

1878

1053	Wm Stewart, A. J. Wilcomb	October 1,	147	Hugh Mooney 110 in. Baker Ditch 37 in.
	Mooney right through "Haystack Ditch No. 3" out of East Side of Beaverhead River.			

1879

		ACRES	PURCHASER
828	John Hoffman	April 15,	120 Mrs. Lorensen 82 in. Matt Kagin, et ux. 38 in.
1053	Canyon Ditch,	May 6,	800 Canyon Ditch
828	Sam'l Ashbaugh, Geo W. Emerick Phil H. Poindexter,	May 15,	396 Mrs. Carrigan 132 in. Canyon Ditch 261 in.
Carrigan right through "Ashbaugh Ditch" out of East Side of Beaverhead River.			
1053	W. B. Carter, Thorpe L. S. Co.	May 15,	500 Carter S. L. Co. 1/3 Harry Sorenson 2/3
"Burfiend and Davis Ditch" out of Stodden Slough.			

1880

828	Lars Hansen	April 15,	150 Quitman Owens
"Owens Ditch" out of East Side of Beaverhead River.			
1053	John Morgan,	May 1,	75 Mont. T. & S. Bk.
"Jones Ditch" out of Beaverhead River.			
1053	John Morgan,	May 1,	100 Mont. T. & S. Bk.
"Jones Ditch"			
828	Isaac Van Camp, Thos. Loughridge,	May 1,	150 Dustan Place 75 in. Geo. Ditty 75 in.
"Van Camp Ditch" out of West Side of Beaverhead River.			

1881

1053	Geo. Staudaher, George Lasich,	April 1,	300 Mrs. Geo. Lasich 1/3 John Maliasich 2/3
"Staudaher 1872 Ditch" out of East Side of Beaverhead River.			
828	John Innes,	May 15,	65 Cliff Ewing
"Porch Innes Ditch" out of West Side of Beaverhead River.			
828	John Hoffman, Henry R. Hoffman	May 15,	105 Christian Place 42 in. Matt Kagin et ux. 43 in. Mrs. Lorensen 20 in.
"Slouch Ditch" out of West Side of Beaverhead River.			
828	Jon. Shineberger,	May 31,	373 E. B. Roe
"Ditch No. 2" out of West Side of Red Rock River.			
1053	O. F. Gammel, Wm. Stewart	July 1,	120 Albert Smith 1/2 Frank Lawyer 1/2
"McKinney Ditch" out of West Side of Beaverhead River.			
1053	Paxton Sheep Co.	September 15,	462 W. A. Staudemeyer
"East Side Ditch No. 2" out of East Side of Beaverhead River.			
828	Arthur Sullivan, Harvey Sullivan	November 30,	200 Martin Markovich 81 in. Mrs. A. Guidici 119 in.
"Guidici Ditch" out of West Side of Beaverhead River.			

CASE	PERSON DECREEED TO	DATE	INCHES	PRESENT OWNER
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1882

1053	Union Ditch Co.	May 1,	500	Dillon Canal Co. "Dillon Canal" out of East Side of Beaverhead River.
828	John Innes "Porch Innes Ditch"	May 1,	65	Cliff Ewing
828	Henry R. Porch, Benj. Bond James Selway, "Porch Snider Ditch" out of West Side of Beaverhead River.	May 1,	376	Joseph Butala Matt Christian Place Clate Schuler Walter Carlson Place Lelah Frakes
828	N. A. Stiles, G. W. Perkins "Perkins Ditch" out of West Side of Beaverhead River.	May 1,	740	Joe Mattis 320 in. Nick Spehar 300 in. Robt. Melton 120 in.
684	Alvin De Witt, Mr. Wm. McIntosh "McIntosh Ditch" out of East Side of Red Rock River.	May 1,	516	A. De Witt 256 in. Scott and Decker 216 in. R. D. Gordon 44 in.
1053	John F. Bishop, Geo. Staudaher, "Bishop Staudaher Ditch" out of East Side of Beaverhead River.	May 15,	609	Steve Lasich 200 in. John Milasich 200 in. English 200 in. Anderson Bros. 9 in.
828	Arthur Sullivan Harvey Sullivan "Guidici Ditch" out of Beaverhead River.	August 1,	450	Mrs. A. Guidici 96 in. Matt Platt 125 in. J. F. Bishop 100 in. Joe Rebich 80 in. M. Markovich 49 in.
1053	J. F. Bishop, "Johnson Ditch" out of Beaverhead River	August 15,	216	Anderson Bros
828	W. F. Henneberry, "Hls Ditch" out of West Side of Beaverhead River.	September 15,	180	W. F. Henneberry
1053	Washington Nyhart Nyhart Estate right taken through the "Nyhart Ditch".	October 1,	180	Nyhart Estate 80 in. Co-op Ditch 100 in.

1883

889	Jos. Butala "Paul Schultz Ditch" out of West Side of Beaverhead River.		160	Joe Stephanic
1053	Jordan Nyhart et al.	February 15,	400	Co-op Ditch

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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(1883 Continued)

828	Geo. W. Emerick Thos. M. Selway "Canyon Ditch"	March 31,	360	Sam Freeman
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828	Wm. Smith Edward Smith Geo. Poindexter Estate "Ed. Smith Ditch" out of West Side of Beaverhead River.	April 1,	750	Edward Smith 1/3 Elza Smith 1/3 Mike Rebich 1/3
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1053	Union Ditch Co. Dillon Canal Co. now owns 1304 shares of all Union Ditch rights. Old Union or Rife Ditch now owns 296 shares of all Union ditch rights.	April 1,	500	Dillon Canal Co. Rife Ditch
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1053	Michael Rebich. "Horton and Hands Ditch" out of West Side of Beaverhead River.	April 1,	200	Michael Rebich
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828	Lawrence A. Brown 1258 "Old Ryan Ditch" out of West Side of Beaverhead River.	August 1,	100	Gracter Electric Co. or Walter Taylor
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1053	Beaverhead Canal Co. "West Side Canal" out of West Side of Beaverhead River.	August 15,	4254	West Side Canal Co.
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828	Lars Hansen Craig Cornell Owen right through the "Owen Ditch" Cornell right through "Canyon Ditch"	October 1,	300	Quitman Owen 150 in. Craig Cornell 150 in.
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828	Wm. Roe Rebich right through "Horton and Hands Ditch" Kruletz right through "Old Roe Ditch" out of E. Side of Beaverhead River. Stephanic right through "Paul Schultz Ditch". Canyon Ditch Co. right through "Canyon Ditch".	October 15,	500	Michael Rebich 220 in. Adolph Kruletz 130 in. Joe Stephanic 70 in. Canyon Ditch Co. 80 in.
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1884

576	Charles E. Norris, Red Rock River.	February 1,	130	Henry Fitter
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828	Wm. Smith, Edward Smith, Geo. Poindexter Est. "Ed. Smith Ditch" from Beaverhead River.	April 1,	258	Ed. Smith 1/3 Elza Smith 1/3 Michael Rebich 1/3
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1053	Canyon Ditch Co. "Canyon Ditch.	April 6,	200	Canyon Ditch Co.
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828	John Innes, "Porch Innes Ditch" out of East Side of Beaverhead River.	May 1,	120	Cliff Ewing 35 in. Clayte Schuler 35 in. Lelah Frakes 50 in.
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(1884 Continued)

1053	Paxton Sheep Co.	May 1,	652	W. A. Staudermeyer
	"Brown Ditch" out of East Side of Beaverhead River.			
576	Carl J. Carlson	May 15,	50	Henry Fitter
	"Red Rock River".			
576	Ernest W. Geary.	May 15,	60	E. W. Geary
	"Red Rock River".			
576	John Downing	June 1,	70	C. F. Peterson
	"Red Rock River".			
1053	John F. Bishop.	June 15,	360	Anderson Bros.
	"Johnson Ditch" out of Stodden Slough.			
828	J. W. Scott.	June 15,	288	Scott and Decker
	"Scott East Side Ditch" out of Red Rock River.			
828	Martha Van Camp.	August 1,	420	Geo. Ditty
	"Van Camp Ditch" out of West Side of Beaverhead River.			
828	John Smith.	August 1,	140	Sam Patterson
	"Van Camp Ditch" out of West Side of Beaverhead River.			
1053	Union Ditch Co.	October 15,	1138	Dillon Canal Co.
				Rife Ditch
	"Dillon Canal" and "Rife Ditch". For proportion by each of the present owners see Sheet 6 hereof.			
828	O. E. Morse,	October 15,	620	Pete Swetich 320 in.
	Geo. W. Perkins			300 in.
	"John Butala Ditch" out of West Side of Beaverhead River.			

1885

576	A. D. Young.	April 7,	500	Henry Thompson
828				
	"A. D. Young Ditch" out of West Side of Red Rock River.			
828	Geo. Buck.	April 15,	175	Henry Thompson
	"Geo. Buck West Side Ditch" out of Red Rock River, West Side.			
828	Emerson Hill	April 15,	50	Jack Edwards
	"Lord or Hill Ditch" out of West Side of Red Rock River.			
828	David Reinhardt.	April 30,	200	Jack Sullivan
	"Reinhardt Ditch" out of West Side of Beaverhead River.			
828	Geo. Buck.	May 12,	250	Henry Thompson
	"Buck and Hains Ditch" out of East Side of Red Rock River.			
828	Geo. Buck.	May 12,	175	Henry Thompson
	"G. Buck 2nd West Side Ditch" out of Red Rock River.			

(1885 Continued)

	DATE	INCHES	PRESENT OWNER
828 Jos. H. Hains,	May 15,	200	Henry Thompson
"Buck and Hains Ditch" out of Red Rock River.			
828 Jos. Shineberger,	June 1,	1280	E. B. Roe
"Big Ditch No. 3" out of East Side of Red Rock River.			
576 James and Lizzie Phillips,	July 15,	50	A. L. Downing
"Red Rock River".			
576 Henry Thompson,	July 15,	100	Wm. Gleed
"Red Rock River".			
828 Jos. Shineberger,	August 1,	510	E. B. Roe
"Upper or Ditch No. 4," out of Red Rock River			
828 Scott and Decker,	August 1,	100	Scott and Decker
Through "Decker Ditch" from a spring tributary to Red Rock River.			
828 Amede Bessette,	October 1,	500	Thomas Pierce
"A. Bessette Ditch" out of West Side of Red Rock River.			
828 Jos. Shineberger,	November 1,	312	E. B. Roe
"West Side or Ditch No. 5" from Red Rock River.			

1886

976 Mary and Smith McKnight,			Smith McKnight
(All of Springs and Swamps.)			
828 Henry Porch,	April 15,	100	Clate Schuler 50 in. Matt Christian 50 in.
"Porch Innes Ditch" out of Beaverhead River.			
828 James Selway,	April 15,	100	Jos. Butala
"Butala Ditch" out of East Side of Beaverhead River.			
1053 Henry Elling Est. et al	May 1,	200	Elling Estate
"Elling Ditch No. 1" out of West Side of Beaverhead River.			
576 Henry Gleed,	May 15,	100	Roe and Fagan
"Red Rock River".			
1053 John Morgan,	June 15,	80	Mont. T. & S. Bank
"Jones Ditch" out of Beaverhead River.			
828 Jos. Shineberger,	June 25,	10	E. B. Roe
"Red Rock River".			
576 A. D. Young,	July 1,	250	E. M. Martinell
"Red Rock River".			
576 Richard Gallagher,	July 18,	500	Gleed Bros.
"Red Rock River".			
828 J. W. Scott,	August 15,	88	Scott and Decker
"Scott West Side Ditch" out of Red Rock River.			

(1886 Continued)

576	Carl J. Carlson, "Red Rock River".	September 1,	100	Henry Fitter
828	John C. Moyer, "Billingsly Ditch" out of West Side of Red Rock River.	September 15,	200	Peyre Bros.
675	Mattie Z. Farrington, "Red Rock River".	September 15,	500	A. E. Scott
576	James Davidson, "Red Rock River".	September 16,	50	Smith McKnight
576	S. E. McGee, "Red Rock River".	October 14,	100	S. E. McGee
828	Martin McMenomey "Martin Ditch" out of Clark Canyon, tributary of Beaverhead River.	October 15,	116	Martin McMenomey
576	Henry Fitter "Red Rock River".	October 23,	160	Henry Fitter
576	H. E. Patterson, "Red Rock River".	October 27,	160	E. F. Price

1887

1053	Geo. Rebich, "Horton and Hands Ditch" out of Beaverhead River.	April 1,	50	Michael Rebich
1053	John Butala, "Carico Ditch" out of East Side of Beaverhead River.	April 1,	50	John Butala
1053	Canyon Ditch Co., "Canyon Ditch" out of Beaverhead River.	April 7,	2600	Canyon Ditch Co.
1053	John F. Bishop, "Island Ditch".	May 1,	150	Anderson Bros.
576	Henry Gleed, "Red Rock River".	May 1,	100	Roe and Fagan
828	Jos Hainds, "Hainds Ditch No. 2" out of East Side of Red Rock River.	May 15,	150	Henry Thompson
576	H. F. Seybold, "Red Rock River".	May 16,	125	H. M. Birrer
576	Luther B. Seybold, "Red Rock River".	May 16,	175	E. F. Price
1053	Wash. Nyhart, et al, Beaverhead River.	July 1,	360	Co-op Ditch
828	Catherine Innes, "Porch Innes Ditch" out of Beaverhead River.	July 5,	50	Cliff Ewing
1053	Gerhardt Albers, "John Morton Ditch" out of Selway Slough, a tributary of Beaverhead River.	August 20,	312	Chas Meine 2/3 Frank Bell 1/3

1892

576	James and Lizzie Philips, "Red Rock River".	May 15.	60	A. I. Downing
576	Henry Gleed, "Red Rock River".	June 1.	262	Roe and Fagan
576	Elmer Martinell, "Red Rock River".	October 31.	100	E. M. Martinell

1894

1053	Frank Swartz, et al. "Island Ditch" out of East Side of Beaverhead River.	April 1.	200	Darnutzer Bros.
1053	Frank Swartz, et al. (See owners of "Baker Ditch" heretofore listed.)	April 1.	240	Baker Ditch
1053	Palmer and Elizabeth Baker.	April 1.	60	Baker Ditch
967	Mary McKnight, "Red Rock River".	April 15.	100	Smith McKnight
576	Geo. W. Drown, "Red Rock River".	May 15.	60	Merrill and Waldorf

1895

576	John M. Stover, "Red Rock River".	March 26.	160	E. F. Price
576	Clark McNinch, "Red Rock River".	June 3.	160	Mrs. Ralph Brothers
576	Pearl T. Bryant,	June 3.	160	E. F. Peterson 1/4 Henry Fitter 1/4 Jas. Patterson 1/4 ————— 1/4
"Bryant Stover Ditch" out of Red Rock River.				

1053	Jordon Nyhart, et al.	July 15.	600	Co-op Ditch
576	Wm. O'Rourke, "Red Rock River".	September 17.	225	Wm. Fleming

1896

576	Henry McNinch "Red Rock River".	April 15.	160	E. F. Price
576	O. L. Johnson	July 2.	160	E. F. Peterson 1/4 Henry Fitter 1/4 Jas. Patterson 1/4 ————— 1/4
"Bryant Stover Ditch".				
576	Grant Stover, "Red Rock River".	July 2.	160	Frank Baldwin
576	Mary Holbrook, "Red Rock River".	September 2.	160	Roy and Emery McNinch
576	Wm. A. Hungate, "Red Rock River".	September 2.	160	Burt Hungate

August 'Coola	...	188	6-15-1871
John 'Coola, Jr.	...	188	6-15-1871
John 'Coola, Jr.	...	62	6-15-1888
B. A. Lewis	...	46	6-1-1890

<u>Neeland Harbor.</u>			
H. I. Border	John ...	876	7-1-1894
J. L. Cunningham	...	91	7-1-1894
...	...	79	10-20-1892
...	...	481	4-15-1891
...	...	151	7-1-1894
...	...	388	7-1-1894
...	...	87	7-1-1894
...	...	66	7-1-1894
...	...	71	7-1-1894
...	...	97	7-1-1893
...	...	43	7-1-1894
...	...	158	7-1-1894
...	...	71	7-1-1894
...	...	88	7-1-1894
...	...	47	7-1-1894

<u>Neibel Harbor.</u>			
Largra H. Tudor	...	78	7-1-1896
Largra H. Tudor	...	82	7-1-1896
Nathias Neibel	...	89	6-15-1872

<u>Evans.</u>			
Sam W. Collette	...	40	6-10-1896

<u>Smith & Harris.</u>			
Spain & Harris	...	1,800	10-30-1886
...	...	...	6-10-1893
...	...	...	6-1-1893
August Bartolson	...	808	6-1-1894
Chau. Vandenhoeck	...	...	7-1-1894

<u>Harroth.</u>			
Harroth Bitch Co.	...	8,000	6-1-1896
Harroth Bitch Co.	...	870	6-1-1894

<u>Forhouse.</u>			
J. & Laura ...	...	83	4-1-1873
J. & Laura ...	...	81	4-1-1873
J. & Laura ...	...	85	6-15-1893
H. Lottor	...	307	6-1-1893
Louisa L. Lottor	...	79	6-1-1893
H. L. Quell	...	40	6-15-1893
H. J. Forhouse	...	137	7-10-1891
H. J. Owenhouse	...	91	6-11-1891
J. W. Forsey	...	97	6-1-1891
Herman Mathias	...	103	6-15-1891
H. W. Forumer	...	...	6-15-1891

Ev. 4

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1897

1063	Union Ditch Co., "Dillon Canal" from Emerick Ashbaugh Slough.		300	Dillon Canal
576	Henry C. Stover, "Red Rock River".	March 8,	160	C. F. Peterson
1063	John Butala, Simeon Estes, Geo Reblich "Carico Ditch" out of Beaverhead River.	May 1,	300	John Butala 1/2 Jos Reblich 1/2
1063	Gerhardt Albers, "Albers Drummy Ditch No. 1" out of Albers Slough.	August 7,	400	John Albers
576	Chas. Flynn, "Red Rock River".	October 23,	160	Merrill and Waldorf
576	John C. Patterson, (For owners of "Bryant Stover Ditch" see Sheet No. 11.	November 1,	160	Bryant Stover Ditch
576	C. E. Crawford, "Red Rock River".	November 4,	160	Wm. Stewart

1901

967	Henry and Al Lewis, "Lewis Ditch" out of Red Rock River.	June 1,	160	Henry Thompson
1053	Paxton Sheep Co., "Staudaher Swamp".	July 1,	200	W. A. Staudenmeyer

1903

1258	Roy S. Dingley, "Brown Ditch" from Warm Springs Creek, a tributary of Beaverhead River.	February 21,	35	Walter Taylor or Roy S. Dingley
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Total Numbers of Inches Deceerd in the Years 1865 through 1903

1865	668	Inches	1883	7521	"
1866	876	"	1884	4806	"
1867	700	"	1885	4702	"
1868	1510	"	1886	2954	"
1869	288	"	1887	5167	"
1870	1595	"	1888	1605	"
1872	918	"	1889	759	"
1873	1049	"	1891	550	"
1875	604	"	1892	422	"
1876	1323	"	1894	660	"
1877	300	"	1896	1305	"
1878	147	"	1896	800	"
1879	1816	"	1897	2140	"
1880	475	"	1901	360	"
1881	1625	"	1903	35	"
1882	3832	"			
TOTAL			51547 Inches		

E. M. Knadler	Wm. J. Knadler	65	6-18-1907
E. M. Knadler	Wm. J. Knadler	65	6-18-1907
E. M. Knadler	Wm. J. Knadler	156	6-18-1907
E. M. Knadler	Wm. J. Knadler	45	6-18-1907
E. M. Knadler	Wm. J. Knadler	70	6-18-1907
E. M. Knadler	Wm. J. Knadler	100	6-18-1907

Wm. McCollough	Wm. J. McCollough	169	7-15-1899
Henry Hopp	Henry Hopp	171	7-15-1899
Ben Greany	Ben Greany	15	6-10-1907
Ben Greany	Ben Greany	55	6-10-1907
E. Ketterer	E. Ketterer	50	6-10-1907
J. M. Laura P. Ketterer	J. M. Laura P. Ketterer	50	6-10-1907

J. B. Weaver	J. B. Weaver	195	6-15-1907
E. W. Heinrichs	E. W. Heinrichs	171	6-15-1907
Willard Knadler	Willard Knadler	152	6-15-1907
F. R. Merkel	F. R. Merkel	45	6-15-1907
F. R. Merkel	F. R. Merkel	135	6-15-1907
F. R. Merkel	F. R. Merkel	55	6-15-1907
F. R. Merkel	F. R. Merkel	55	6-15-1907
F. R. Merkel	F. R. Merkel	55	6-15-1907

J. S. Hoffman	J. S. Hoffman	5	6-15-1907
J. S. Hoffman	J. S. Hoffman	255	6-15-1907
Geo. Baitsch	Geo. Baitsch	155	6-15-1907
W. D. Brock	W. D. Brock	55	6-15-1907
W. D. Brock	W. D. Brock	75	6-15-1907
Scholar Chaplar	Scholar Chaplar	51	6-15-1907
Mary & Emily Chaplar	Mary & Emily Chaplar	71	6-15-1907

A. D. Weaver	A. D. Weaver	175	10-15-1906
D. E. Stone	D. E. Stone	150	10-15-1906
D. E. Stone	D. E. Stone	55	6-15-1907
D. E. Stone	D. E. Stone	150	6-15-1907
Leonard Stone	Leonard Stone	85	10-15-1906

G. F. Durham	G. F. Durham	185	11-15-1875
Walter & Lelia Crafton	Walter & Lelia Crafton	174	6-15-1898
Lelia P. Crafton	Lelia P. Crafton	45	7-10-1891
August Johnson	August Johnson	155	7-10-1891
F. A. Finkle	F. A. Finkle	80	7-10-1891

Geo. Ford	Geo. Ford	111	6-10-1908
Geo. Ford	Geo. Ford	51	6-10-1908
D. H. Hoffman	D. H. Hoffman	159	6-10-1908
D. H. Hoffman	D. H. Hoffman	45	6-10-1908
C. A. Moldiman	C. A. Moldiman	101	6-10-1908
A. Moldiman	A. Moldiman	57	6-10-1908

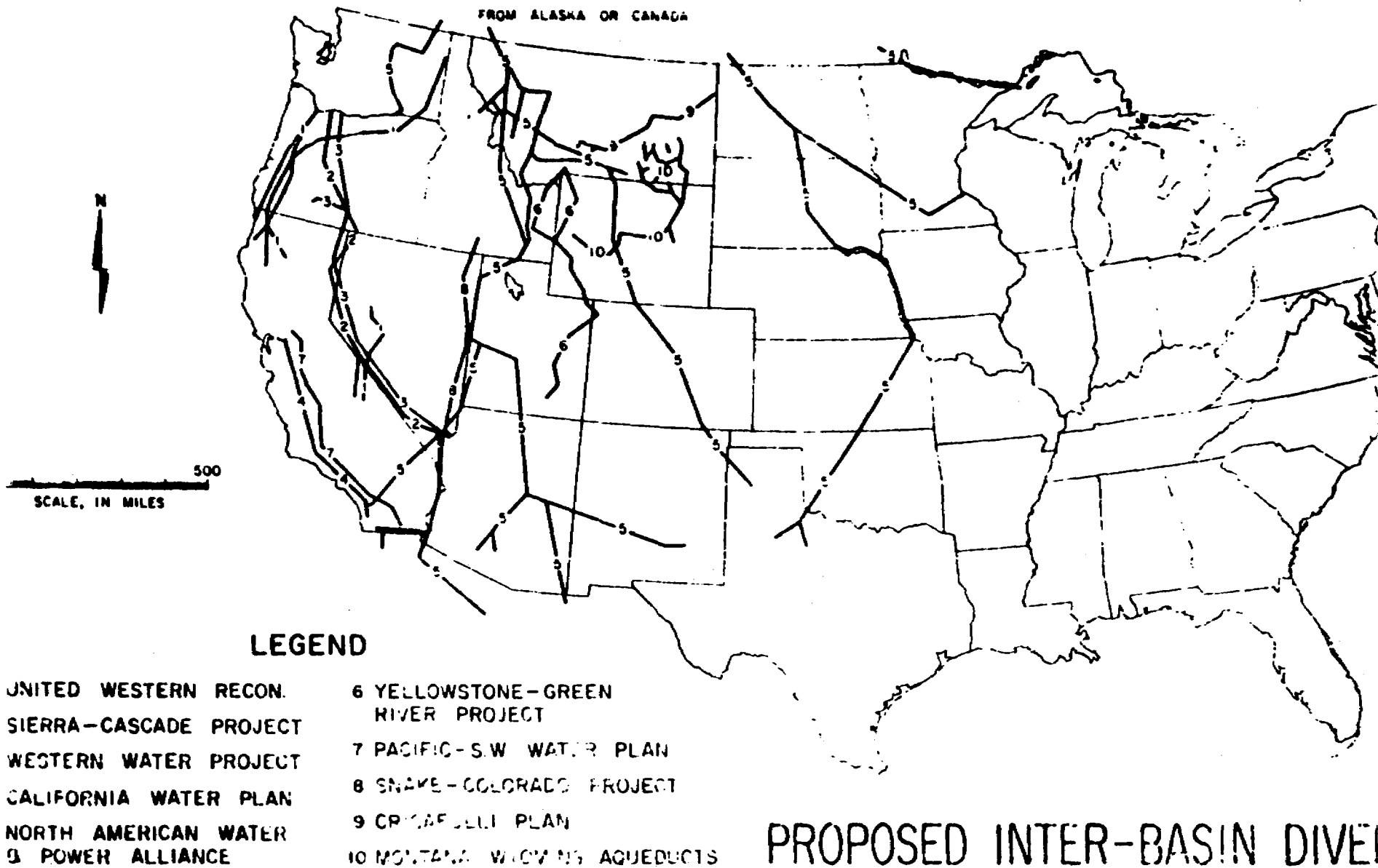
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<u>Geo. H. Foll</u>			
Henry Sterling	Geo. Sterling	183	6-1-1888
Henry Sterling	Geo. Sterling	21	6-1-1888
Henry Sterling	Geo. Sterling	21	6-1-1879
C. H. Davis	Geo. Sterling	21	6-1-1883
Harry Corcoran	Geo. Sterling	183	6-1-1883
Roni Monforton	Geo. Sterling	184	6-1-1877
O. H. Carter	Geo. Sterling	184	6-1-1880
G. H. Carter	Geo. Sterling	18	6-1-1877
M. H. Mitchell	Geo. Sterling	18	6-1-1877
Peter Leary	Geo. Sterling	28	6-1-1877
Harry Smart	Geo. Sterling	28	6-1-1880
<u>Emma C. Gregg</u>			
Geo. C. Hill	Geo. C. Hill	40	6-15-1896
Geo. C. Hill	Geo. C. Hill	50	6-15-1893
<u>Emma C. Gregg</u>			
O. H. Bailey	O. H. Bailey	20	6-15-1887
George Cox	O. H. Bailey	20	6-15-1887
Joe McLaughlin	O. H. Bailey	20	6-15-1881
Emma C. Gregg	O. H. Bailey	20	6-15-1881
<u>Geo. Cox</u>			
Harry White	Harry White	40	6-15-1881
<u>Damon Gabriel</u>			
West Gallatin Ry. Co.	West Gallatin Ry. Co.	60	6-15-1886
<u>Hughes Ditch Co.</u>			
" " "	" " "	20	6-1-1874
" " "	" " "	1,121	6-1-1881
" " "	" " "	60	6-15-1885
" " "	" " "	100	6-1-1883
" " "	" " "	90	6-1-1889
" " "	" " "	90	6-1-1889
" " "	" " "	100	6-1-1894
<u>Mathias Michel</u>			
Thos. Kirk	Thos. Kirk	141	6-1-1876
Susan B. Clark	Susan B. Clark	141	6-1-1885
D. Cameron	D. Cameron	170	6-1-1879
D. Cameron	D. Cameron	170	6-1-1885
<u>J. B. Corrie</u>			
J. B. Corrie	J. B. Corrie	20	6-15-1887
J. B. Corrie	J. B. Corrie	20	6-15-1887

Harry J. McInnon	<u>McInnon, Harry J.</u>	61	6-15-1897
Eugene Buckley	<u>Buckley, Eugene</u>	17	6-15-1894
J. V. Curtis	<u>Curtis, J. V.</u>	1	6-15-1892
O. F. Crawford	<u>Crawford, O. F.</u>	191	6-15-1897
Robert Bryan	<u>Bryan, Robert</u>	65	6-15-1897
Henry Webb	<u>Webb, Henry</u>	26	6-15-1897
S. McKinnon	<u>McKinnon, S.</u>	61	6-15-1897
Henry Webb	<u>Webb, Henry</u>	10	6-15-1895
Henry Webb	<u>Webb, Henry</u>	10	6-15-1895
F. H. Luffin	<u>Luffin, F. H.</u>	120	6-15-1895
Harry White	<u>White, Harry</u>	14	6-15-1897
S. McKinnon	<u>McKinnon, S.</u>	10	6-15-1897

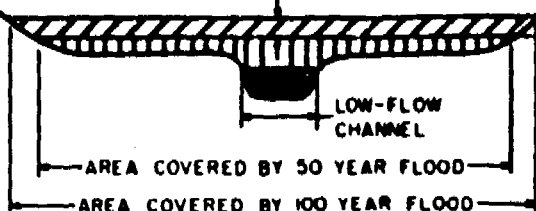
WITNESS STATEMENT

Ex. 5



Please leave prepared statement with the committee secretary.

- DIFFERENCE IN ALTITUDE



STATION	1900-01 Altitude/foot	190-YEAR FLOOD Altitude/foot	DIFFERENCE Altitude/foot
Yellowstone R. at Gorwin Spring	5001.1	5001.1	0.5
Yellowstone R. near Livingston	5001.0	4997.3	0.4
Gardiner River at Ft. Lincoln	5000.0	4998.0	0.4
Yellowstone R. nr. Seed Point	5000.0	4999.1	0.5
Clark Fork Yellowstone R. at Elmer	4999.5	4998.1	0.4
Yellowstone R. at Madison, Id. near Indian	4998.7	4997.2	0.3
Yellowstone R. at Miles City	4998.7	4997.4	0.7
Yellowstone R. nr. Gallatin	4998.0	4990.0	1.1
Yellowstone R. near Maney	4994.0	4990.0	1.2
Powder R. near Loefer	4990.0	4988.4	1.6
Jefferson R. nr. Shoshone	4989.5	4980.0	0.7
Big Hole R. near Bellevue	4981.1	4981.5	0.4
Gallatin R. near Gallatin Falls	4979.0	4979.0	0.4
Shoshone River at Weston	4978.0	4974.0	0.7
Milk River at Elmer	4974.7	4974.3	1.1
Blackfoot River near Bonner	4969.3	4973.3	0.9
Clark Fork nr. Elgin	4961.7	4960.4	0.7
Bitterfoot River near Arby	4959.3	4961.8	0.4
Clark Fork near Alberton	4957.0	4973.0	1.0
St. Regis R. near St. Regis	4954.3	4950.4	0.6
Clark Fork at St. Regis	4954.3	4951.0	0.7
Flathead River at Columbia Falls	4950.0	4900.0	0.7
Clark Fork near Elaine	4940.0	4938.3	0.6

1973

NATURAL RESOURCES COMMITTEE Page 7

43rd Legislative Assembly

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
SB 426	All state agencies to give assistance to tribal councils on matters relating to coal dev. on Indian lands.	Feb. 16	Feb. 22		Feb. 22	BE CONCURRED IN AS AMENDED	
SB 443	The open cut sand and gravel mining act	Feb. 16	Feb. 24	March 6--returned to include bentonite	Feb. 24 Mar. 6	BE CONCURRED IN AS AMENDED " "	
SB 445	Flood frequency--from 50 to a 100 year frequency--agreements to acquire flood data.	Feb. 20	Feb. 24		Mar. 1	BE CONCURRED IN	
SB 444	Montana water use act	Feb. 20	Feb. 27 7 p.m.		Mar. 6	BE CONCURRED IN AS AMENDED	
SB 208	Montana subdivision and platting act.	Feb. 20	Feb. 27		Mar. 3	BE CONCURRED IN AS AMENDED	
SB 300	State antiquities act	Feb. 27		Re-referred to State Administration	Mar. 3		
HR 21	Requesting the Congress to provide funds for a study of Judith River	Feb. 28	Mar. 1		Mar 1	BE ADOPTED	BE ADOPTED

Tuesday, February 27, 1973

The Natural Resources Committee met at 7 p.m. at the Highway Auditorium with Chairman Sheldon presiding for a hearing on Senate Bill 444. The room was full of interested people.

Chairman Sheldon stated the proponents would have fifty minutes, the opponents sixty minutes, and then a ten minute rebuttal for the proponents.

Senator McGowan, the chief sponsor, was the first speaker and introduced the following proponent speakers.

Gary Wicks, Director of the Department of Natural Resources and Conservation, was the next speaker. He spoke of the increasing demand for more water in other parts of our nation; of the need to record and centralize the records of the existing water rights to determine the need for our water--for what we can't prove is being put to beneficial use will be considered surplus and given to other users in other states. He stated SB 444 is not going to solve all our problems but is a start in the right direction.

Senator Bill Groff, a representative of the Governor's Water Council, also stated there is a shortage of water in parts of our nation, the aquafier is dropping, and they are looking at Montana's water. Senator Groff stated we do know we have a justifiable claim to our water and have a right to be renumerated for water we ship out.

Senator Harrison, an attorney for the Water Conservation Board, was the next one introduced by Sen. McGowan. He stated he had contributed to this bill and to study that resulted in other such bills. The response has been in the past to delay, study and wait. He stated substantial input into this bill had come from Professor Stone, University of Montana Law School. He mentioned there have been extensions of the "Reservation Doctrine" (right of the Indians to water that flows past them) in parts of the United States. He stated the Yellowstone Basin would be an excellent pilot project. He, also, said there are adequate protections in this bill. He closed his statement by saying Montana has waited long enough for a good water bill.

Cecil Weeding, member of the Governor's Water Council and a director of a soil conservation water district, was the next speaker introduced. He stated he saw many problems developing and we must protect our water as it is our life blood and a dear and coveted commodity particularly now with industry also laying claim to it. He said much time, thought, and effort has gone into preparing this bill; water laws of other states have been studied and public hearings were held where planning drafts were heard and discussed. He said the drafted bill carries over existing water rights and affords protection to all interests in water.

Hubert White, past president of Montana Water Development Association, and associated with the Water Advisory Council, was the next speaker. He stated he had long been interested in saving water for the use of Montana. He stated this is not a perfect bill and there are a lot of amendments suggested; but, due to lack of time to study further, he felt

the bill should be passed now and rectify if necessary in ten months when the legislature reconvenes. He felt it was essential we establish the rights to our water as soon as possible--and the only way to do that is have plenty of water rights on record.

Senator McOmber was the next speaker. He stated he represented four agricultural, water-using counties. He stated under the new constitution a central system of filing is a mandate. He stated he felt Montanans value their water too cheaply having taken it from the Indians for free. Now, he said, someone is trying to take it from us --and to keep the thirsty southern down-streamers from succeeding we have to have laws that record our water rights. He said it was a political fact of life that the southern states will get some consideration; but the federal laws have given us an opportunity to reserve; and, if we don't reserve, the water will be up for grabs by other states.

Henry Loble, an attorney, said he was representing himself. He stated there was a pressing need for a new water law. He said he had practiced water law for many years and tried many water suits. He stated this was a legal bill and one that requires study and analysis. He said the original bill was substantially changed in the Senate, and there are things in the bill with which he does not entirely agree. But he stated he felt it was possible the contending parties can get together and come up with a decent water bill. He said there were three main points to be decided: questions of existing rights, questions of who would establish a permit system for future rights, and the question of how to administer the water rights in distributing and regulate. But he felt that these things could be resolved--a harder thing to resolve would be to obtain the state money that would be needed to finance this department. He felt a solution might be a subcommittee and he said he would be glad to help the subcommittee if they so wished.

Fred Caruso, Montana Water Development Association, was the next speaker. His testimony is exhibit 1. Attached to his testimony are recommended amendments prepared by G. W. Gilbert.

Grace Edwards, League of Women Voters, was the next speaker. Since there was a shortage of time she passed copies of her testimony to the members rather than read it. A copy of this is exhibit 2.

Signing as favoring SB 444 was Pat Antonick, Sierra Club, Montana Groups.

The first of the opponent speakers was W. G. Gilbert, Dillon attorney. He stated in his area are many water decrees dating from 1862 and even earlier for use rights. He said the people involved were scared to death of this bill as it would require the people who own the water rights to get into water suits and readjudicate their water rights. The reason for this, he stated, was because the bill gives to the Water Resources Board the right to call in proof of a water right. He further stated a law to call in proof of water rights by a state engineer has been on the books since 1939, but nothing has been done perhaps because of money. This same state engineer could adjudicate any water stream where the water rights were in question--under this bill the Natural Resources Dept. would have this power. Mr. Gilbert stated that he had some suggested amendments and these are attached to Mr. Caruso's testimony which is exhibit 1.

Carl Davis, Clark Canyon Water Co., passed out copies of decreed water rights lists from the Beaverhead and Red Rock Rivers and from streams in Beaverhead County and Rattlesnake Creek. These are exhibit 3. He said the Water Resources Survey had done an excellent piece of work in three counties recording these rights. He felt the system now working was in the best interests of the state. He had a couple of suggested amendments: section 8, subsection (2), there should be a reference to a copy of the decree; and in section 39, subsection (1), the word "final" should be removed; and he didn't like subsection (3) of that section.

Mr. Berg, Bozeman, stated he was speaking at the request of several different canal companies, who owned a considerable part of decreed water. He felt the state was undertaking a monumental task. He feared because the burden of proof was on the water user they would be very involved in law suits over the adjudication of water. He, also, questioned the one reference to reservoirs and the fact a person intending to appropriate water for this purpose must have a permit. He felt this would discourage the conservation of water at the head of streams. He felt there were many things in this act needing careful attention and he questioned if it had had it. Mr. Berg left a list of water decrees for the West Gallatin in which he had checked the canal and ditch companies. This is exhibit 4.

Senator Boylan felt caution was needed. He asked the people in the room who had water rights and were scared to raise their hands. There were many who did. He felt this bill should be held over to 1974.

Everett Snortland, Montana Farm Bureau, stated he felt this act as it passed the Senate would allow open season on all the water rights. He stated he supported Mr. Gilbert and his amendments.

The next speaker was Jim Paugh, representing two Gallatin County irrigation canals. His written testimony is exhibit 5.

Mons Teigen, Montana Stockgrowers Association, stated his association had reviewed Mr. Gilbert's amendments and supported them.

Vernon L. Westlake, Bozeman, was the next speaker. His written testimony is exhibit 6.

Bill Garrison stated at this time the people who live and use water in his area (Ruby, Beaverhead, Jefferson, Madison) are scared to death of the bill.

Wesley D'Ewart, Farm Bureau, stated that several years ago the legislature passed a law that water rights were to be recorded and mapped; and ever since the legislature has appropriated money to do this centralized filing.

Jeff Brazier, Western Montana Mining Association, presented several suggested amendments to protect the miners that may have had miners water rights; but due to lack of profit may abandon the mine and water rights but later when the mineral can be profitably mined again may want the rights.

Mr. Garrison spoke again. He said the Big Hole River did not have decreed rights, but the seven wide creeks leading into the river are decreed; and the residents along these creeks are very concerned that the law stays the way it is.

Senator McGowan was the first proponent rebuttal speaker. He warned that unless we resolve the problems and come up with something, water rights won't be worth the paper they are written on. He said there are at least ten plans from out-of-state to use Montana's water.

Charles Bowan, was the next rebuttal speaker, and stated there are three different sets of rights: existing decreed, filed and adjudicated, and use rights. He said things change and the lists of water rights presented earlier were only good when they were published. On mining claims--he stated theirs was a non-consumptive use and should be permitted; while agriculture is consumptive with a good percentage used. He compared Mr. Gilbert's amendments with those proposed by the Department of Natural Resources and he stated there was much duplication and felt a good subcommittee could pull them together in good form. He, also, brought up a case where the miners inches decreed far exceeded a stream's potential--so a record is needed to adjust water rights, too.

Chairman Sheldon opened the meeting to questions from the committee. There were none so the meeting adjourned at 9:30 p.m.

Respectfully submitted,


ARTHUR H. SHELDEN, Chairman

eas

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Tuesday, February 27, 1973

*STATEMENT IN SUPPORT OF S.B. 444 WITH ATTACHED AMENDMENTS
INCORPORATED INTO TEXT OF BLUE COPY OF BILL.....*

Mr. Chairman and Members of the Committee:

The Montana Water Development Association supports the concepts presented in Senate Bill 444. We particularly support the concepts of centralized filing of water rights and the identification of water rights and actual water use.

We supported S.B. 444 in the Senate, almost "sight-unseen," with the reservation that we would ask our membership to view this bill with a critical eye and to make recommendations for possible improvements to be presented to this Committee of the House. We did so, and tonight we propose a set of amendments.

We support the amended S.B. 444 WITH THESE AMENDMENTS and other housekeeping amendments which may be required to make the bill workable.

The blue copy of S.B. 444 and these amendments were carefully reviewed by our association, with the able assistance of four attorneys, two of whom have over 30 years experience each in water law and who are well known for their work in this field. Our approval of the bill with these amendments was almost unanimous.

Mr. Chairman, with your permission, I would like to relinquish any further time I may have to Mr. G.W. Gilbert of Dillon, who is the primary author of these amendments. He is far better able to explain these important amendments than I.

In conclusion, the Montana Water Development Association approves of S.B. 444 with these amendments, but must again reserve final approval of the measure until the fully amended bill can be read in its entirety.

Thank you for your consideration.

*/s/ FRED CARUSO
Legislative Coordinator*

PROPOSALS FOR CHANGES
TO
SENATE BILL 444 AS AMENDED**

Section 3. Definitions. Amend to read---

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, ~~or-in-the-case-of-a-public-agency-to-reserve water-in-accordance-with-section-26.~~

Section 5. Powers and duties of board. Amend to read---

(2) (c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, ~~and-to-file-reports-on-appropriations;~~

Section 6. Amend to read (Substitute)---

Section 6. Establishment of a system of centralized records of existing water rights. (1) The department shall, as soon as practical, establish a centralized record system of all rights existing on the effective date of this act to be the use of any waters of the state for a beneficial use. To accomplish this, the department shall gather data essential to the proper understanding and identification of those existing rights.

(2) The department may select and specify areas or sources where the need for ~~a-determination~~ an identification of existing rights is most urgent, and first ~~determine-identify~~ the existing rights in those areas or sources.

Section 7. Amend to read--Data for ~~determination~~ identification of existing rights. The data gathered by the department for the ~~determination~~ identification of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. A decree, ~~which-is-based-on-evidence-introduced and-not-upon-stipulations-or-admissions-of-the-parties,~~ is determinative of the rights of the parties to it according to its terms; however, the decree is only

**Other "house-keeping" amendments may be necessary to make the bill workable.

prima facie evidence of the decreed rights if there are persons who claim rights by filing declarations under section 8, which were not determined decreed by the court when the source of water was adjudicated. Upon request of the department, the clerks of the several district courts shall furnish the department copies of all decrees affecting water rights;

(2) through (8) retain

Section 8. Declarations of existing rights. Amend (2) to read---

(2) A declaration shall be made under oath by each water user claiming the right to use water from such source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

Section 9. Delete. Substitute Amended Section 9---

Section 9. Department to record claims to existing water rights. The department shall, following receipt of data pertaining to claims to existing rights to the use of the waters from any specified area or specified source determine whether such data is sufficient for the establishment of records of the rights to the use of such area or such source.

Section 10. Delete. Substitute Amended Section 10---

Section 10. Department authorized to require court adjudication of claimed rights to the use of waters of specified source or area. Should the department determine that the claims of rights to use waters of a specified area or specified source are in conflict, one with another, or others, or are not sufficiently definite to enable the department to establish a clear record of the relative

priorities existing in the rights to the use of the waters of such area or source, the department shall commence an action in the appropriate District Court having jurisdiction to adjudicate the waters of such area or such source. All claimants of rights to the use of waters from such source as determined by the department following the procedure provided for by Sections 6, 7, 8 and 9 of this act shall be joined as defendants to such action. The complaint in such action shall seek the adjudication of the waters of such specified area or of such specified source.

Section 11. Delete.

Section 12. Delete.

Section 13. Delete.

Section 14. Delete.

Section 15. Amend to read---

Section 15. Certificate of water right. ~~When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of~~ Certified copies of the decrees of the various District Courts of the State of Montana, or any U.S. Court having jurisdiction to determine water rights by adjudication, rendered after the effective date of this act and adjudicating the rights to the beneficial use of any of the waters of this state shall be filed with the department. The department shall, on the basis of the such final decree, issue to each person decreed an existing right by such decree a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

Section 17. Notice of application. Amend (1) to read---(1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3)

consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. ~~A notice shall also be served upon any public agency that has reserved waters in the source under section 26.~~ The department may, in its discretion, also serve notice upon any state agency or other persons the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

Section 26. Delete. (Reservation of Waters Section)

Section 29. Transfer of appropriation right. Amend (3) to read---

(3) An appropriator holding a permit or certificate issued by the department may not sever all or any part of an appropriation right from the land to which it is appurtenant, or sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed transfer if the requirements of section 28(2) are met.

Section 32. Supervision of water distribution.

(2) Delete.

Amend (3) to read---

(3) When a water distribution controversy involving a claimant of an existing right arises upon a source of water in which existing rights have not been determined ~~according to section 6 through 15 of this act,~~ previously determined by adjudication, the department may, in its discretion, ~~or on the petition of one (1) or more of the parties to the controversy,~~ proceed within a reasonable time to determine initiate proceedings to adjudicate existing rights in the source, in accordance with this act. ~~If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties. The order settling the controversy shall be subject to subsequent determination of~~

~~existing-rights-under-this-act.~~

(4) Delete and substitute to read---

(4) Any controversy between claimants of rights to use the waters of this state shall be determined by a court of competent jurisdiction.

Section 34. Entry on land--inspections. Amend to read---

Any employee or agent of the department authorized by the director may with the permission of the person lawfully in possession thereof enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property In the event permission to enter upon such land is refused the department shall be authorized to seek court authority for such entry by appropriate legal procedure.

Section 35. Legal assistance. Delete (1)

Section 36. Hearings before board---Administrative Procedure Act. Amend to read---

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act provided expressly, however, that appeal from the administrative decision by an aggrieved party shall entitle such party to a trial de Nova before the district court having jurisdiction of the matter.

Section 38. Deposit of fees and penalties. Amend to read---

All fees ~~and-penalties~~ paid to the department or collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of any of the provisions of this act shall be deposited with the County Treasurer of the county wherein said court presides and shall be disposed of in the same manner as any other penalty or fine.

Section 39. Amend (2) to read---

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree, the judge of the district court which issued the final decree ~~shall~~ may upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

Section 44. Amend to read---

Section 44....

89-2928.1. Well logs. Within sixty (60) days after any well is completed, the driller shall file with the administrator a well log report on a form provided by the administrator at its offices and at the offices of the county clerks and recorders. The administrator may return the report for refiling if it is incomplete or incorrect. The administrator shall provide a copy of the complete and correct well log to the Montana Bureau of Mines and Geology.

Reproduced and distributed by:

MONTANA WATER DEVELOPMENT ASSOCIATION
P.O. Box 162, Helena, Montana 59601
Gibson G. Goodman, Secretary-Treasurer

MONTANA WATER DEVELOPMENT ASSOCIATION INFORMATION SHEET

P.O. Box 162, Helena, Montana 59601 (406) 442-7361

Origin of MWDA:

The Montana Water Development Association was organized as a non-profit, non-agency, voluntary association of water users in 1966 with the merger of the Montana Reclamation Association and the Montana Water Users Association. The history of these two organizations dates back as far as the late 1930's.

The Principal Aims and Interests of MWDA Are To:

- ...protect and develop the water resources of Montana for the benefit of the citizens of the state of Montana.
- ...protect Montana's individual and state water rights.
- ...provide its membership with an open forum for discussion and decision on questions dealing with proposals for development within all stream basins in Montana.
- ...participate with local, state and federal agencies and other organizations in planning for the multi-purpose development of the land and water resources of our state.
- ...sponsor conferences and meetings where fair and full discussion of questions involving sound water conservation and irrigation practices may be disseminated.
- ...promote state and federal legislation of particular importance to state water interests.
- ...provide the state's share of the National Water Resources Association's budget for securing broad support for our reclamation projects.

Who Belongs to MWDA?

Irrigators, ranchers, dry-land farmers, bankers, lumbermen, well drillers, chambers of commerce, large and small industries, irrigation districts, attorneys, professors, private individuals...anyone or any business concerned with the sound development of our natural resources, the preservation and protection of our water rights, or the development of specific water projects. Our membership is extremely diverse with representatives from all groups...and the membership is growing rapidly.

MWDA Programs:

The Montana Water Development Association has initiated a strong statewide "Keyman" Program designed to facilitate communications between various governmental agencies, the officers of MWDA and key members, and members at the local community level. Keymen were selected for their interest and willingness to respond to communications which may from time to time ask them to alert their neighbors of key issues in water development.

In addition, MWDA is engaged in an active and continuous publicity program to stimulate an awareness of the need for sound, total-water planning throughout the entire state.

MWDA members receive the National Water Resources Association News, called "Water Life," each month, and also the Montana Water Development Association Report. Many special bulletins, publications, charts and fact sheets are available to MWDA members, free or at nominal cost.

An annual convention is held in different sites throughout the state and national authorities on water attend to speak. At our annual convention, the membership becomes actively involved in the development of policy through the writing of resolutions designed to guide the organization throughout the year.

It is our belief that a well-informed, involved membership is a strong membership.

MWDA Membership Profile:

MWDA is financed entirely by the voluntary membership contributions of individuals, irrigation districts, small businesses and industrial firms. MWDA does not receive or seek the financial support of any governmental agency. Our 1972 budget was received in approximately the following ratio: individual membership contributions, 9%; irrigation districts, 25%; small businesses and banking institutions, 28%; rural electric and telephone cooperatives, 6%; industrial and manufacturing firms (including the railroads), 27%; and miscellaneous organizations (such as chambers of commerce), 5%.

Our irrigation district members, over 60 in total, represents hundreds of thousands of acres of irrigated farm land and hundreds of farmers who work the soil. These farmers are automatically members of MWDA and the National and are not counted as separate individual members. More than 125 individuals not represented by businesses or irrigation districts are members of MWDA.

Officers and Directors:

The following are the officers and directors of MWDA for 1973 with their occupations listed:

President: D. Keith Williams, Billings--agriculture and real estate rep., Industry
 Vice Pres: Allen Kolstad, Chester--farmer, rancher, legislator
 Vice Pres: Frank Crisafulli, Glendive--inventor, manufacturer of agri. equipment
 Sec.-Treas: Gibson G. Goodman, Helena--feed and grain dealer, farmer, rancher
 NWRA Director: Hubert G. White, Townsend--lumberman, rancher
 NWRA Director Emeritus: Wesley A. D'Ewart, Wilsall--retired rancher, former U.S. Congressman
 Director: John Baucus, Helena--rancher
 " Jerry Bryson, Billings--agricultural representative, railroad
 " W.L. Current, Shelby--rural electric coop manager
 " M.E. Eddleman, Worden--farmer, rancher
 " Mark Etchart, Glasgow--farmer, rancher
 " D.P. Fabrick, Choteau--retired rancher
 " Dr. Sid Groff, Butte--geologist, professor
 " Joe Helle, Dillon--farmer, rancher
 " Dr. Helmer Holje, Bozeman--hydrologist, professor
 " Al Kersich, Billings--civil engineer, consultant
 " Robert Lee, Fairfield--irrigation district director, farmer
 " Gordon McGowan, Highwood--farmer, legislator
 " Marvin McMichael, Missoula--industry
 " Bruce Maclay, Florence--farmer, rancher
 " Herb Mobley, Ashland--farmer, rancher
 " John Morrison, Helena--civil engineer, consultant
 " George Pehl, Whitehall--farm implement dealer
 " Eugene Phillips, Kalispell--lawyer
 " Harold Zent, Hysham--farmer, rancher

Affiliations:

MWDA is affiliated with the National Water Resources Association, 897 National Press Building, Washington, D.C. 20004, and has been active in the Upper Missouri Water Users Association over the years. Both of these organizations hold annual conventions in the western states and are attended by MWDA members.

WITNESS STATEMENT

EX-2

Name Grace Edwards Date 2-27-73
Address 140 S. Crestwood Dr. Billings ⁵⁹¹⁰² Support ? X
Representing _____ Oppose ? _____
Which Bill ? SB 444 Amend ? _____
Comments:

Please leave prepared statement with the committee secretary.

True

LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony prepared for the 43rd Legislative Assembly - 1973

The League of Women Voters of Montana supports SB 444 as currently written. We commend the Water Law Advisory Council and the Department of Natural Resources for their work in drafting the bill and holding the series of public hearings prior to the Legislature.

We strongly urge the Natural Resources Committee "do pass" the bill as now written. Amendments were made in response to hearings with the result that district courts rather than the department are relied upon for determination and adjudication of existing water rights and current rights disputes. As required by the 1972 Constitution, existing water rights are guaranteed protection.

We particularly urge you to retain the following provisions:

1. The permit system for future water rights. This will prevent speculative and unrealistic filings and give the state some procedures to minimize future conflicts between users of water. Water has sparked notorious hassles in the past, but if nothing is done, these could be small spats compared to future spiraling demands and consequent conflicts. We believe the permit system is vitally needed, and according to Mr. Wicks, similar systems are used and working in almost all the other western states.
2. The time is now to finally recognize recreation as one of the beneficial uses of water.
3. The reservation of water by public units of government for maintenance of water quality and minimum stream flow. We see the need for protection of in-stream waters as the greatest single future problem. Again, existing rights are guaranteed. This provision only applies to currently unappropriated waters. It may be used only by governmental units and then subject to permit and certification procedures, the same as any other beneficial use.

We also support centralized filing of water rights, as also required by the new Constitution. Montana in many areas does not know who's using water, how much is used, or who's entitled to it.

We approve the provision regarding transfer of water rights, to make sure that transfers, especially from one type of use to another, do not exceed actual use rights. We feel this is particularly necessary to eastern Montana, where agricultural water rights may be bought up and used for year-round industrial purposes.

The bill right now is a reasonable bill that can be supported by industry, agriculture, municipalities, conservationists, and recreationists. We feel it strikes a balance between users and sets up fair procedures for handling any conflicts. We urge passage without further amendment.

WATER RIGHTS – RATTLESNAKE CREEK

(Decreed in Cause No. 2456, Banning vs. Argenta Ranch, Co., etc.)

NAME	AMOUNT INCHES	TOTAL INCHES TO DATE	DATE OF RIGHT	PRESENT OWNER
Wood L. S. Co.	¼ of 75		June 1, 1865	City of Dillon
Rife Ranch Co.	⅜ of 75		June 1, 1865	Hans Dons
Fredricka Cushing	⅜ of 75	75	June 1, 1865	Circle S Ranch—Ivan Remley
City of Dillon	40	115	May 31, 1868	City of Dillon
City of Dillon	30	145	June 1, 1868	City of Dillon
Margaret A. Greater	75		July 6, 1870	John Hand
Argenta Townsite	40	260	July 6, 1870	Argenta Townsite
Wood L. S. Co.	¼ of 75		June 1, 1874	Berg Christensen Co.
Rife Ranch Co.	⅜ of 75		June 1, 1874	Hans Dons
Fredricka Cushing	⅜ of 75	335	June 1, 1874	Circle S Ranch—Ivan Remley
Rattlesnake L. S. Co.	½ of 300		June 1, 1875	Joe Carroll
Rife Ranch Co.	3/16 of 300		June 1, 1875	Hans Dons
Fredricka Cushing	3/16 of 300		June 1, 1875	Circle S Ranch—Ivan Remley
Wood L. S. Co.	⅛ of 300	635	June 1, 1875	Berg Christensen Co.
John Hull	150		June 1, 1877	Nicholas & Roberts
John Laden	150	935	June 1, 1877	John Laden
S. A. Benning	25		June 1, 1879	Joe Carroll
Rattlesnake L. S. Co.	5		June 1, 1879	Joe Carroll
Wood L. S. Co.	¼ of 180		June 1, 1879	Berg Christensen Co.
State Bk (Rife)	235		June 1, 1879	Berg Christensen Co.
Rife Ranch Co.	⅜ of 180		June 1, 1879	Hans Dons
Fredricka Cushing	⅜ of 180	1380	June 1, 1879	Circle S Ranch—Ivan Remley
Elza Smith	333		June 1, 1880	George Webster (222) Joe Carroll (111)
Wood L. S. Co.	¼ of 20		June 1, 1880	Berg Christensen Co.
Rife Ranch Co.	⅜ of 20		June 1, 1880	Hans Dons
Fredricka Cushing	⅜ of 20	1733	June 1, 1880	Circle S Ranch—Ivan Remley
S. A. Banning	61		June 1, 1881	Joe Carroll
Rattlesnake L. S. Co.	339	2133	June 1, 1881	Joe Carroll
S. A. Banning	39		June 1, 1882	Joe Carroll
Rattlesnake L. S. Co.	215		June 1, 1882	Joe Carroll
Wood L. S. Co.	¼ of 332		June 1, 1882	Berg Christensen Co.
Albers	60		June 1, 1882	Herman Peterson
Rife Ranch Co.	⅜ of 332		June 1, 1882	Hans Dons
Fredricka Cushing	⅜ of 332	2779	June 1, 1882	Circle S Ranch—Ivan Remley
S. A. Banning	55		June 1, 1884	Joe Carroll
Rattlesnake L. S. Co.	161	2995	June 1, 1884	Joe Carroll
Wood L. S. Co.	¼ of 225		June 1, 1886	Berg Christensen Co.
Wood L. S. Co.	¼ of 175		June 1, 1886	Berg Christensen Co.
Rife Ranch Co.	⅜ of 225		June 1, 1886	Hans Dons
Rife Ranch Co.	⅜ of 175		June 1, 1886	Hans Dons
Pearl Cornett	200		June 1, 1886	Berg Christensen Co.
Fredricka Cushing	⅜ of 225		June 1, 1886	Circle S Ranch—Ivan Remley
Fredricka Cushing	⅜ of 175	3595	June 1, 1886	Circle S Ranch—Ivan Remley
Rattlesnake L. S. Co.	40	3635	June 1, 1887	Joe Carroll
Ida M. Slack (Argenta Ranch Co.)	40		June 20, 1887	Hans Dons
Wood L. S. Co.	140		June 20, 1887	Berg Christensen Co.
State Bank (Rife)	300	4115	June 20, 1887	Berg Christensen Co.
Edward C. Smith	150		July 20, 1887	N. Downing
Ida Slack (Argenta R)	75		July 20, 1887	Hans Dons
Wood L. S. Co.	80		July 20, 1887	Berg Christensen Co.
State Bank (Rife)	75	4495	July 20, 1887	Berg Christensen Co.
Wood L. S. Co.	20	4515	June 1, 1889	Berg Christensen Co.
Wood L. S. Co.	90	4605	Feb. 8, 1892	Berg Christensen Co.
Bonneview Res. Co. (Minneopa Lake)	751 Acre Ft.		August 1, 1894	

WATER RIGHTS – RATTLESNAKE CREEK

(Decreed in Cause No. 2456, Banning vs. Argenta Ranch. Co., etc.)

NAME	AMOUNT INCHES	TOTAL INCHES TO DATE	DATE OF RIGHT	PRESENT OWNER
Bonneview Res. Co. (Boatman Reservoir)	518 Acre Ft.		June 18, 1897	
Bonneview Res. Co. (Tent Lake Res.)	759 Acre Ft.		Sept. 3, 1901	
Wood Live S. Co.	150	4755	May 1, 1902	
Bonneview Res. Co. (Harris Lake Res.)	260 Acre Ft.		July 30, 1903	
Rattlesnake Res. Co. (Esler Lake Res.)	2000 Acre Ft.		Sept. 15, 1904	
Mabel W. Thompson	272		June 1, 1905	
Mabel W. Thompson	272		June 1, 1905	
Henry Van Kleek (Bason Creek)	350		June 1, 1905	
Henry Van Kleek	75		June 1, 1905	
H. J. Thompson	278		June 1, 1905	
H. J. Thompson	50	6052	June 1, 1905	
Bonneview Res. Co. (Rim Res.)	3000 Acre Ft.		Oct. 4, 1906	
Argenta Ranch Co.	800	6852	Feb. 9, 1910	
Argenta Ranch Co. C. W. Scott	2/3 Kelly Res. 1/3 3000 Acre Ft.		May 27, 1911	
C. W. Scott	680	7532	June 5, 1915	
Total Stream rights decreed on Rattlesnake Creek			7532 Miners' Inches	

News
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2872 *Swamp Creek (Big Hole Basin)*

Wavis
Ex 3

List of Decreed Water Rights from Beaverhead and Red Rock Rivers

As of Date August 1, 1926

(This list has been compiled from data which we believe to be reliable.)

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1865

828	Robt. H. Selway, James Selway	March 15,	250	Jos. Butala, 125 in. Julia Selway, 125 in.
"Selway Ditch" from East Side of Blacktail Creek.				

828	Wm. Mauldin,	October 15,	418	Geo. R. Featherly
"Wm. Stodden Ditch" from Beaverhead River.				

1866

1053	Washington Nyhart, Wm. Linder Est.	May 1,	50	Nyhart Est. 25 in. Co-op Ditch, 25 in.
Nyhart Estate right through "Nyhart Ditch" out of West Side of Beaverhead River.				
Present owners of "Co-op Ditch" as follows: F. P. Birrer 3/10, A. Linder 2/10, Mose Smythe 2/10, Mike Rebich 2/10, Jordon Nyhart 1/10.				

1053	Frank Swartz, et al.,	May 1,	105	Darnutzer Bros
"Island Ditch" out of East Side of Beaverhead River.				

1053	J. F. Bishop	May 15,	125	Anderson Bros.
"Johnson Ditch" out of East Side of Beaverhead River.				

1053	Thorpe Livestock Co.	May 31,	246	Wm. Kennison, 126 in. Hans Henningson, 120 in.
"Haystack Ditch" No. 2 conveys Kennison Right.				
"Haystack Ditch" No. 1 conveys Henningson Right.				
Both ditches taken out of East Side of Beaverhead River.				

1053	Frank Swartz, et al.,	July 1,	300	Darnutzer Bros., 243 in. Co-op Ditch, 57 in.
Darnutzer Bros. right taken through "Island Ditch".				

828 1258	Lawrence A. Brown	August 1,	50	Graeter Electric Co. or Walter Taylor
"Old Ryan Ditch" out of West Side of Beaverhead River.				

1867

1053	W. B. Carter	May 1,	200	Carter L. S. Co.
"Old Carter Ditch" out of East Side of Stodden Slough, a tributary of Beaverhead River.				

1053	Mercer Estate Elling Est. Brooks Est.	June 1,	532	Allen Nichols $\frac{1}{2}$ Albert Smith $\frac{1}{2}$ Mont. T. & S. Bk. $\frac{1}{2}$
"Mule Shoe Ditch" out of East Side of Beaverhead River.				

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1868

828	Rose Heavey		150	Rose Heavey
	"Canyon Ditch" out of East Side of Beaverhead River.			
828	Canyon Ditch Co.		210	Canyon Ditch Co.
	Diverted through "Canyon Ditch".			
1053	John Morgan	April 1,	150	Mont. T. & S. Bk. ½
	John Sidensticker,			Mrs. Sidensticker ½
	"Jones Ditch" out of West Side of Beaverhead River.			
1053	W. B. Carter,	August 1,	1000	Carter L. S. Co.
	"Carter River Ditch" out of East Side of Beaverhead River.			
	"High Water Right"			

1869

1053	Palmer and Elizabeth Baker	October 1,	288	F. P. Birrer .2
				Mike Rebich .4
				Wilcomb Place .4
				Swanstrum .1
				Edwards .1
	"Baker Ditch" out of West Side of Beaverhead River.			

1870

1053	W. B. Carter,	April 1,	360	Carter L. S. Co.
	"Davis Slough Ditch" out of East Side of Stodden Slough, a tributary of Beaverhead River.			
1053	Peder Jensen,	May 1,	160	Anderson Bros.
	"Johnson Ditch" out of slough tributary to Beaverhead River.			
1053	John F. Bishop	May 1,	200	Anderson Bros.
	"Johnson Ditch"			
1053	Gerhardt Albers,	May 1,	200	John Albers
	"Saxon Ditch No. 1" out of Albers Slough, a tributary of Beaverhead River.			
1053	Gerhardt Albers,	May 1,	100	John Albers
	"Hill Ditch" out of Albers Slough, a tributary of Beaverhead River.			
1053	O. F. Gammell	May 1,	240	Albert Smith ½
	Wm. Stewart,			Frank Lawyer ½
	"McKinney Ditch" out of West Side of Beaverhead River.			
1053	Est. of Wm. Linder	May 10,	135	Co-op Ditch
1053	Washington Nyhart	May 12,	135	Nyhart Estate
	"Nyhart Ditch" out of West Side of Beaverhead River.			
828	Jos. Shineberger	August 31,	50	E. B. Roe
	"Ditch No. 1" Red Rock River.			

1872

1053	W. B. Carter	May 1,	400	Carter L. S. Co.
	"Davis River Ditch" out of East Side of Beaverhead River.			
	"High Water Right"			

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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(1872 Continued)

1053	James Mauldin, "Brown Ditch" out of East Side of Beaverhead River.	May 1,	250	W. A. Staudemeyer
1053	Carl Swanstrum	May 10,	108	Co-op Ditch
1053	J. F. Bishop, "Johnson Ditch" out of slough tributary to Beaverhead River.	May 15,	160	Anderson Bros.

1873

828	Arthur Sullivan, "Slough Ditch" out of Beaverhead River.	April 31,	312	Mike Bowe 192 in. Frank Lakner 120 in.
1053	Thorpe L. S. Co. State Bank of Dillon right through the "Upper River Ditch" and Keenan right through "Keenan Ditch"; both ditches out of East Side of Beaverhead River.	May 1,	500	St Bank Dillon 300 in. John Keeman 200 in.
1053	O. F. Gammel (For Owners of "Baker Ditch" see page two hereof.)	July 1,	5	Baker Ditch
1053	Frank Swartz,	July 1,	120	Co-op Ditch
1053	Palmer and Elizabeth Baker	July 1,	112	Baker Ditch

1875

1053	John Morgan John Seidensticker "Jones Ditch" out of Beaverhead River.	May 1,	100	Mont. T. & S. Bk. ½ Mrs. Seidensticker ½
1053	James Mauldin, "Big Slough Ditch" out of Albers Slough.	October 15,	504	W. A. Staudemeyer

1876

1053	Peder Jensen, "Selway Ditch" out of West Side of Beaverhead River.	May 1,	288	Anderson Bros.
1053	Gerhardt Albers, "Saxton Ditch No. 2" out of Albers Slough.	May 1,	400	John Albers
1053	Wm. Stewart, Almond J. Wilcomb	May 1,	317	Baker Ditch
828	Blivens L. S. Co. "Billy Woods Ditch" out of West Side of Beaverhead River.	August 1,	318	Chas. Meine

1877

1053	Gerhardt Albers, "Albers River Ditch" out of West Side of Beaverhead River.	August 1,	300	John Albers
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1878

1053	Wm Stewart, A. J. Wilcomb Mooney right through "Haystack Ditch No. 3" out of East Side of Beaverhead River.	October 1,	147	Hugh Mooney 110 in. Baker Ditch 37 in.
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CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1879

828	John Hoffman,	April 15,	120	Mrs. Lorensen 82 in. Matt Kagin, et ux. 38 in.
1053	Canyon Ditch,	May 6,	800	Canyon Ditch
828	Sam'l Ashbaugh, Geo W. Emerick Phil H. Poindexter,	May 15,	396	Mrs. Carrigan 132 in. Canyon Ditch 264 in.
	Carrigan right through "Ashbaugh Ditch" out of East Side of Beaverhead River.			
1053	W. B. Carter, Thorpe L. S. Co.	May 15,	500	Carter S. L. Co. 1 /3 Harry Sorenson 2/3
	"Burfiend and Davis Ditch" out of Stodden Slough.			

1880

828	Lars Hansen	April 15,	150	Quitman Owens
	"Owens Ditch" out of East Side of Beaverhead River.			
1053	John Morgan,	May 1,	75	Mont. T. & S. Bk.
	"Jones Ditch" out of Beaverhead River.			
1053	John Morgan,	May 1,	100	Mont. T. & S. Bk.
	"Jones Ditch"			
828	Isaac Van Camp, Thos. Loughridge,	May 1,	150	Dustan Place 75 in. Geo. Ditty 75 in.
	"Van Camp Ditch" out of West Side of Beaverhead River.			

1881

1053	Geo. Staudaher, George Lasich,	April 1,	300	Mrs. Geo. Lasich 1/3 John Maliasich 2/3
	"Staudaher 1872 Ditch" out of East Side of Beaverhead River.			
828	John Innes,	May 15,	65	Cliff Ewing
	"Porch Innes Ditch" out of West Side of Beaverhead River.			
828	John Hoffman, Henry R.Hoffman	May 15,	105	Christian Place 42 in. Matt Kagin et ux. 43 in. Mrs. Lorensen 20 in.
	"Slough Ditch" out of West Side of Beaverhead River.			
828	Jos. Shineberger,	May 31,	373	E. B. Roe
	"Ditch No. 2" out of West Side of Red Rock River.			
1053	O. F. Gammel, Wm. Stewart	July 1,	120	Albert Smith 1/2 Frank Lawyer 1/2
	"McKinney Ditch" out of West Side of Beaverhead River.			
1053	Paxton Sheep Co.	September 15,	462	W. A. Staudemeyer
	"East Side Ditch No. 2" out of East Side of Beaverhead River.			
828	Arthur Sullivan, Harvey Sullivan	November 30,	200	Martin Markovich 81 in. Mrs. A. Guidici 119 in.
	"Guidici Ditch" out of West Side of Beaverhead River.			

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1882

1053	Union Ditch Co.	May 1,	500	Dillon Canal Co.
	"Dillon Canal" out of East Side of Beaverhead River.			
828	John Innes	May 1,	65	Cliff Ewing
	"Porch Innes Ditch"			
828	Henry R. Porch, Benj. Bond James Selway,	May 1,	376	Joseph Butala Matt Christian Place Clate Schuler Walter Carlson Place Lelah Frakes
	"Porch Snider Ditch" out of West Side of Beaverhead River.			
828	N. A. Stiles, G. W. Perkins	May 1,	740	Joe Motts 320 in. Nick Spehar 300 in. Robt. Melton 120 in.
	"Perkins Ditch" out of West Side of Beaverhead River.			
684	Alvin De Witt, Mr. Wm. McIntosh	May 1,	516	A. De Witt 256 in. Scott and Decker 216 in. R. D. Gordon 44 in.
	"McIntosh Ditch" out of East Side of Red Rock River.			
1053	John F. Bishop, Geo. Staudaher,	May 15,	609	Steve Lasich 200 in. John Milasich 200 in. English 200 in. Anderson Bros. 9 in.
	""Bishop Staudaher Ditch" out of East Side of Beaverhead River.			
828	Arthur Sullivan Harvey Sullivan	August 1,	450	Mrs. A. Guidici 96 in. Matt Plutt 125 in. J. F. Bishop 100 in. Joe Rebich 80 in. M. Markovich 49 in.
	"Guidici Ditch" out of Beaverhead River.			
1053	J. F. Bishop,	August 15,	216	Anderson Bros.
	"Johnson Ditch" out of Beaverhead River			
828	W. F. Henneberry,	September 15,	180	W. F. Henneberry
	"His Ditch" out of West Side of Beaverhead River.			
1053	Washington Nyhart	October 1,	180	Nyhart Estate 80 in. Co-op Ditch 100 in.
	Nyhart Estate right taken through the "Nyhart Ditch".			

1883

889	Jos. Butala		160	Joe Stephanic
	"Paul Schultz Ditch" out of West Side of Beaverhead River.			
1053	Jordan Nyhart et al.	February 15,	400	Co-op Ditch

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
(1883 Continued)				
828	Geo. W. Emerick Thos. M. Selway "Canyon Ditch"	March 31,	360	Sam Freeman
828	Wm. Smith Edward Smith Geo. Poindexter Estate "Ed. Smith Ditch" out of West Side of Beaverhead River.	April 1,	750	Edward Smith 1/3 Elza Smith 1/3 Mike Rebich 1/3
1053	Union Ditch Co. Dillon Canal Co. now owns 1304 shares of all Union Ditch rights. Old Union or Rife Ditch now owns 296 shares of all Union ditch rights.	April 1,	500	Dillon Canal Co. Rife Ditch
1053	Michael Rebich, "Horton and Hands Ditch" out of West Side of Beaverhead River.	April 1,	200	Michael Rebich
828	Lawrence A. Brown 1258 "Old Ryan Ditch" out of West Side of Beaverhead River.	August 1,	100	Graeter Electric Co. or Walter Taylor
1053	Beaverhead Canal Co. "West Side Canal" out of West Side of Beaverhead River.	August 15,	4254	West Side Canal Co.
828	Lars Hansen Craig Cornell Owen right through the "Owen Ditch" Cornell right through "Canyon Ditch"	October 1,	300	Quitman Owen 150 in. Craig Cornell 150 in.
828	Wm. Roe Rebich right through "Horton and Hands Ditch" Kruletz right through "Old Roe Ditch" out of E. Side of Beaverhead River. Stephanic right through "Paul Schultz Ditch". Canyon Ditch Co. right through "Canyon Ditch".	October 15,	500	Michael Rebich 220 in. Adolph Kruletz 130 in. Joe Stephanic 70 in. Canyon Ditch Co. 80 in.

1884

576	Charles E. Norris, Red Rock River.	February 1,	130	Henry Fitter
828	Wm. Smith, Edward Smith, Geo. Poindexter Est. "Ed. Smith Ditch" from Beaverhead River.	April 1,	258	Ed. Smith 1/3 Elza Smith 1/3 Michael Rebich 1/3
1053	Canyon Ditch Co. "Canyon Ditch.	April 6,	200	Canyon Ditch Co.
828	John Innes, "Porch Innes Ditch" out of East Side of Beaverhead River.	May 1,	120	Cliff Ewing 35 in. Clayte Schuler 35 in. Lelah Frakes 50 in.

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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(1884 Continued)

1053	Paxton Sheep Co. "Brown Ditch" out of East Side of Beaverhead River.	May 1,	652	W. A. Staudermeyer
576	Carl J. Carlson "Red Rock River".	May 15,	50	Henry Fitter
576	Ernest W. Geary, "Red Rock River".	May 15,	60	E. W. Geary
576	John Downing "Red Rock River".	June 1,	70	C. F. Peterson
1053	John F. Bishop, "Johnson Ditch" out of Stodden Slough.	June 15,	360	Anderson Bros.
828	J. W. Scott, "Scott East Side Ditch" out of Red Rock River.	June 15,	288	Scott and Decker
828	Martha Van Camp, "Van Camp Ditch" out of West Side of Beaverhead River.	August 1,	420	Geo. Ditty
828	John Smith, "Van Camp Ditch" out of West Side of Beaverhead River.	August 1,	140	Sam Patterson
1053	Union Ditch Co. "Dillon Canal" and "Rife Ditch". For proportion by each of the present owners see Sheet 6 hereof.	October 15,	1438	Dillon Canal Co. Rife Ditch
828	O. E. Morse, Geo. W. Perkins "John Butala Ditch" out of West Side of Beaverhead River.	October 15,	620	Pete Swetich 320 in. _____ 300 in.

1885

576 828	A. D. Young, "A. D. Young Ditch" out of West Side of Red Rock River.	April 7,	500	Henry Thompson
828	Geo. Buck, "Geo. Buck West Side Ditch" out of Red Rock River, West Side.	April 15,	175	Henry Thompson
828	Emerson Hill "Lord or Hill Ditch" out of West Side of Red Rock River.	April 15,	50	Jack Edwards
828	David Reinhardt, "Reinhardt Ditch" out of West Side of Beaverhead River.	April 30,	200	Jack Sullivan
828	Geo. Buck, "Buck and Hains Ditch" out of East Side of Red Rock River.	May 12,	250	Henry Thompson
828	Geo. Buck, "G. Buck 2nd West Side Ditch" out of Red Rock River.	May 12,	175	Henry Thompson

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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(1885 Continued)

828	Jos. H. Hains, "Buck and Hains Ditch" out of Red Rock River.	May 15,	200	Henry Thompson
828	Jos. Shineberger, "Big Ditch No. 3" out of East Side of Red Rock River.	June 1,	1280	E. B. Roe
576	James and Lizzie Phillips, "Red Rock River".	July 15,	50	A. L. Downing
576	Henry Thompson, "Red Rock River".	July 15,	400	Wm. Glead
828	Jos. Shineberger, "Upper or Ditch No. 4,, out of Red Rock River.	August 1,	510	E. B. Roe
828	Scott and Decker, Through "Decker Ditch" from a spring tributary to Red Rock River.	August 1,	100	Scott and Decker
828	Amede Bessette, "A. Bessette Ditch" out of West Side of Red Rock River.	October 1,	500	Thomas Pierce
828	Jos. Shineberger, "West Side or Ditch No. 5" from Red Rock River.	November 1,	312	E. B. Roe

1886

976	Mary and Smith McKnight, (All of Springs and Swamps.)			Smith McKnight
828	Henry Porch, "Porch Innes Ditch" out of Beaverhead River.	April 15,	100	Clate Schuler 50 in. Matt Christian 50 in.
828	James Selway, "Butala Ditch" out of East Side of Beaverhead River.	April 15,	100	Jos. Butala
1053	Henry Elling Est. et al "Elling Ditch No. 1" out of West Side of Beaverhead River.	May 1,	200	Elling Estate
576	Henry Glead, "Red Rock River".	May 15,	100	Roe and Fagan
1053	John Morgan, "Jones Ditch" out of Beaverhead River.	June 15,	80	Mont. T. & S. Bank
828	Jos. Shineberger, "Red Rock River".	June 25,	10	E. B. Roe
576	A. D. Young, "Red Rock River".	July 1,	250	E. M. Martinell
576	Richard Gallagher, "Red Rock River".	July 18,	500	Glead Bros.
828	J. W. Scott, "Scott West Side Ditch" out of Red Rock River.	August 15,	88	Scott and Decker

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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(1886 Continued)

576	Carl J. Carlson, "Red Rock River".	September 1,	100	Henry Fitter
828	John C. Moyer, "Billingsly Ditch" out of West Side of Red Rock River.	September 15,	280	Peyre Bros.
675	Mattie Z. Farrington, "Red Rock River".	September 15,	500	A. E. Scott
576	James Davidson, "Red Rock River".	September 16,	50	Smith McKnight
576	S. E. McGee, "Red Rock River".	October 14,	130	S. E. McGee
828	Martin McMenomey "Martin Ditch" out of Clark Canyon, tributary of Beaverhead River.	October 15,	146	Martin McMenomey
576	Henry Fitter "Red Rock River".	October 23,	160	Henry Fitter
576	H. E. Patterson, "Red Rock River".	October 27,	160	E. F. Price

1887

1053	Geo. Rebich, "Horton and Hands Ditch" out of Beaverhead River.	April 1,	50	Michael Rebich
1053	John Butala, "Carico Ditch" out of East Side of Beaverhead River.	April 1,	50	John Butala
1053	Canyon Ditch Co., "Canyon Ditch" out of Beaverhead River.	April 7,	2600	Canyon Ditch Co.
1053	John F. Bishop, "Island Ditch".	May 1,	150	Anderson Bros.
576	Henry Gleed, "Red Rock River".	May 1,	100	Roe and Fagan
828	Jos. Hains, "Hains Ditch No. 2" out of East Side of Red Rock River.	May 15,	150	Henry Thompson
576	H. F. Seybold, "Red Rock River".	May 16,	125	H. M. Birrer
576	Luther B. Seybold, "Red Rock River".	May 16,	175	E. F. Price
1053	Wash. Nyhart, et al, Beaverhead River.	July 1,	360	Co-op Ditch
828	Catherine Innes, "Porch Innes Ditch" out of Beaverhead River.	July 5,	50	Cliff Ewing
1053	Gerhardt Albers, "John Morton Ditch" out of Selway Slough, a tributary of Beaverhead River.	August 20,	342	Chas Meine 2/3 Frank Bell 1/3

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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(1887 Continued)

576	Ernest W. Geary, "Red Rock River".	October 15,	100	Ernest W. Geary
576	J. A. Geary, "Red Rock River".	October 15,	75	E. W. Geary
828	Wm. J. Farley et ux, F. S. Carpenter M. M. Freed "Bradley Ditch" out of East Side of Red Rock River.	October 15,	840	Henry Thompson

1888

576	James Davidson, "Red Rock River".	May 1,	350	Smith McKnight
576	Geo. H. Dixon "Red Rock River".	May 15,	150	Merrell and Waldorf
576	John Downing "Red Rock River".	May 27,	100	C. F. Peterson
576	S. E. McGee, "Red Rock River".	May 27,	50	S. E. McGee
1053	Gerhardt Albers, (Swamp)	June	100	John Albers
576	Henry Fitter, "Red Rock River".	June 1,	320	Henry Fitter
576	Verona Melton, "Red Rock River".	June 15,	145	Wm. Fleming
576	James and Lizzie Philips,	July 30,	50	A. L. Downing
828	Lawrence A. Brown, "Brown Ditch" out of Warm Springs Creek, tributary of Beaverhead River.	August 1,	100	Graeter Electric or Walter Taylor
576	Mitchel Martinell, "Red Rock River".	August 13,	80	E. M. Martinell
576	Geo. Hungate, "Red Rock River".	August 15,	160	Geo. Duck

1889

1053	Ernest Maurer, Beaverhead River.	April 1,	200	Co-op Ditch
828	Jos. Shineberger, Emerson Hill	May 31,	559	E. B. Roe 399 in. Jack Edwards 160 in.

1891

576	H. C. Patterson, "Red Rock River".	April 13,	50	E. M. Martinell
1053	Gerhardt Albers, "Albers Drummy Ditch No. 2,, out of Albers Slough.	May 1,	500	John Albers

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
1892				
576	James and Lizzie Philips, "Red Rock River".	May 15,	60	A. L. Downing
576	Henry Gleed, "Red Rock River".	June 1,	262	Roe and Fagan
576	Elmer Martinell, "Red Rock River".	October 31,	100	E. M. Martinell
1894				
1053	Frank Swartz, et at, "Island Ditch" out of East Side of Beaverhead River.	April 1,	200	Darnutzer Bros.
1053	Frank Swartz, et at, (See owners of "Baker Ditch" heretofore listed.)	April 1,	240	Baker Ditch
1053	Palmer and Elizabeth Baker,	April 1,	60	Baker Ditch
967	Mary McKnight, "Red Rock River".	April 15,	100	Smith McKnight
576	Geo. W. Drown, "Red Rock River".	May 15,	60	Merrill and Waldorf
1895				
576	John M. Stover, "Red Rock River".	March 26,	160	E. F. Price
576	Clark McNinch, "Red Rock River".	June 3,	160	Mrs. Ralph Brothers
576	Pearl T. Bryant,	June 3,	160	E. F. Peterson 1/4 Henry Fitter 1/4 Jas. Patterson 1/4 _____ 1/4
	"Bryant Stover Ditch" out of Red Rock River.			
1053	Jordon Nyhart, et al,	July 15,	600	Co-op Ditch
576	Wm. O'Rourke, "Red Rock River".	September 17,	225	Wm. Fleming
1896				
576	Henry McNinch "Red Rock River".	April 15,	160	E. F. Price
576	O. L. Johnson	July 2,	160	E. F. Peterson 1/4 Henry Fitter 1/4 Jas. Patterson 1/4 _____ 1/4
	"Bryant Stover Ditch".			
576	Grant Stover, "Red Rock River".	July 2,	160	Frank Baldwin
576	Mary Holbrook, "Red Rock River".	September 2,	160	Roy and Emery McNinch
576	Wm. A. Hungate, "Red Rock River".	September 2,	160	Bart Hungate

CASE	PERSON DECREED TO	DATE	INCHES	PRESENT OWNER
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1897

1053	Union Ditch Co., "Dillon Canal" from Emerick Ashbaugh Selway Slough.		800	Dillon Canal
576	Henry C. Stover, "Red Rock River".	March 8,	160	C. F. Peterson
1053	John Butala, Simeon Estes, Geo Rebich "Carico Ditch" out of Beaverhead River.	May 1,	300	John Butala 1/2 Jos Rebich 1/2
1053	Gerhardt Albers, "Albers Drummy Ditch No. 1" out of Albers Slough.	August 7,	400	John Albers
576	Chas. Flynn, "Red Rock River".	October 23,	160	Merrill and Waldorf
576	John C. Patterson, (For owners of "Bryant Stover Ditch" see Sheet No. 11.	November 1,	160	Bryant Stover Ditch
576	C. E. Crawford, "Red Rock River".	November 4,	160	Wm. Stewart

1901

967	Henry and Al Lewis, "Lewis Ditch" out of Red Rock River.	June 1,	160	Henry Thompson
1053	Paxton Sheep Co., "Staudaher Swamp".	July 1,	200	W. A. Staudenmeyer

1903

1258	Roy S. Dingley, "Brown Ditch" from Warm Springs Creek, a tributary of Beaverhead River.	February 21,	35	Walter Taylor or Roy S. Dingley
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Total Numbers of Inches Decreed in the Years 1865 through 1903

1865	668	Inches	1883	7524	"
1866	876	"	1884	4806	"
1867	732	"	1885	4702	"
1868	1510	"	1886	2954	"
1869	288	"	1887	5167	"
1870	1595	"	1888	1605	"
1872	918	"	1889	759	"
1873	1049	"	1891	550	"
1875	604	"	1892	422	"
1876	1323	"	1894	660	"
1877	300	"	1895	1305	"
1878	147	"	1896	800	"
1879	1816	"	1897	2140	"
1880	475	"	1901	360	"
1881	1625	"	1903	35	"
1882	3832	"			
			TOTAL	51547	Inches

WEST GALLATIN WATER RIGHTS.

Ex. 4

Kleinschmidt.

To whom decreed	Present Owner	Inches	Date
West Gallatin Canal Co.	West Gallatin Canal Co.	3,000	4-14-1883
West Gallatin Canal Co.	West Gallatin Canal Co.	3,040	6-15-1901
Chas. A. Holgate	A. H. Black Co.	40	7- 1-1866-1866
Gallatin Ranch Co.	A. H. Black Co.	100	6-15-1866
Gallatin Ranch Co.	Alice A. Woodworth	100	6-15-1866

Bush Etherington

W. B. Burkett, Guardian	W. B. Burkett, Guardian	128	6-15-1888
W. B. Burkett, Guardian	W. B. Burkett, "	40	7-15-1889
John E. Bush	Child-Ancney	150	6-15-1889
John E. Bush	Child-Ancney	42	6-15-1898
Harry Nelson	Child-Ancney	211	6-15-1890
C. W. Overstreet	Child-Ancney	42	6- 1-1883
Hans & Geo. Sakjer	Hans Sakjer	40	7-1-1889

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Black Ditch from Spring Creek

A. H. Black	A. H. Black Co.	40	7- 1-1882
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Bolinger Ditch.

H. A. Bolinger	Marie T. Steingruber et al	40	6- 1-1882
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Farmers Canal.

Farmers Canal Co.	Farmers Canal Co.	40	6-15-1883
Farmers Canal Co.	Farmers Canal Co.	750	7- 1-1890
Farmers Canal Co.	Farmers Canal Co.	5,000	7-20-1890
Farmers Canal Co.	Farmers Canal Co.	3,000	6-15-1891
Farmers Canal Co.	Farmers Canal Co.	1,820	4- 2-1892
O. L. Ward	Harriet A. Sales Inc.	110	7- 1-1890
Gallatin Ranch Co.	O. L. Ward	100	6-15-1866
Frank Jakle	Thos. J. Gilkerson	90	6-18-1870

Allison & Lewis.

J. C. Atkins	Harriet A. Sales, Inc.	70	5- 1-1867
J. C. Carpenter	Harriet A. Sales, Inc.	54	5- 1-1867
Geo. M. Lewis	O. L. Ward	76	5- 1-1867
P. C. Neilson	Mary A. Harmon and		
	Kila May Cushman, execs.	37	5- 1-1867
P. C. Neilson	Bapke Bros.	44	5- 1-1867
H. S. Buell	Mrs. W. I. Wall	45	5- 1-1867
H. S. Buell	C. C. Smith	45	5- 1-1867
H. S. Buell	E. A. Hardesty	10	5- 1-1867
H. S. Buell	John Stucky	10	5- 1-1867
H. S. Buell	John Michel	12	5- 1-1867
H. S. Buell	John Michel	70	5- 1-1867
H. S. Buell	Steve Williams	12	5- 1-1867
H. S. Buell	J. E. Freeman	25	5- 1-1867
H. S. Buell	John Michel	12	5- 1-1867
H. S. Buell	E. L. Heidel, Adm.	25	5- 1-1867
H. S. Buell	E. L. Thomas	33	5- 1-1867
H. S. Buell	John Michel	25	5- 1-1867
H. S. Buell	Sam Collett	25	5- 1-1867
H. S. Buell	H. L. Casey	76	5- 1-1867

Middle Creek Supply.

Middle Creek Supply Co.	Middle Creek Ditch Supply Co.	3,526	6- 1-1872
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<u>Accola Ditch Sm.</u>		
August Accola	A. I. Ketterer	122 6-15-1871
John Accola Jr.	A. I. Ketterer	126 6-15-1871
John Accola Jr.	A. I. Ketterer	62 6-15-1888
D. W. Lewis	Laura L. Ketterer and Susana Francis	40 6- 1-1890

<u>Beck and Border.</u>		
H. I. Border	John P. Cloninger, Agent	378 7- 1-1894
J. M. Cunningham	Jacob Marx	91 7- 1-1894
J. M. Cunningham	Jacob Marx	79 10-20-1902
E. H. Dammerell	Albertena Dammerell	441 4-13-1891
E. H. Dammerell	Albertena Dammerell	191 7- 1-1894
C. I. Border	C. I. Border	282 7- 1-1894
John Accola, Jr.	J. I. Ketterer	63 7- 1-1894
Peter Emmell	J. I. Ketterer	66 7- 1-1894
Louise S. Ketterer	J. I. Ketterer	42 7- 1-1894
Thos. Michner	Mrs. M. Roche	97 7- 1-1890
Chas. E. Waterman	Nelson & McWay	49 7- 1-1894
W. P. Border	John Daugh	153 7- 1-1894
W. P. Border	J. H. Gunde	73 7- 1-1894
J. H. Brooks	J. H. Gunde	23 7- 1-1894
J. H. Brooks	Louis A. Lamb	40 7- 1-1894

<u>Heibel & Tudor.</u>		
Lumyra E. Tudor	Roy E. Richards	75 7- 1-1886
Lumyra E. Tudor	Roy E. Richards	86 7- 1-1883
Mathias Heibel	Ernest Lane	59 8-15-1872

<u>Heverns.</u>		
Sam W. Collett	John Ankjer	40 6-30-1886

<u>Spain & Ferris.</u>		
Spain & Ferris Ditch Co.	Spain & Ferris Ditch Co.	1,200 10-30-1886
" " " " " " " "	" " " " " " " "	2,704 6-20-1890
" " " " " " " "	" " " " " " " "	300 6- 1-1892
August Bertelsen	Northern Pac. Ry. Co.	283 7- 1-1894
Chas. Vandenhock	Fred W. Wilson	303 7- 1-1894

<u>Mammoth.</u>		
Mammoth Ditch Co.	Mammoth Ditch Co.	2,361 6- 1-1886
Mammoth Ditch Co.	Mammoth Ditch Co.	579 5-31-1884

<u>Owenhouse.</u>		
J.W. & Laura P. Kirschner-	E. J. Cloninger	33 4- 1-1873
J.W. & Laura P. Kirschner-	W. J. Cloninger	51 4- 1-1888
J. W. & Laura P. Kirschner-	Lester Grouse	95 6-15-1888
E. Ketterer	E. Ketterer	207 6- 1-1883
Louia S. Ketterer	Laura L. Ketterer et al	79 5- 1-1869
H. S. Buell	Bert Ketterer	40 6-15-1888
E. J. Owenhouse	E. J. Owenhouse	183 7-30-1891
E. J. Owenhouse	E. J. Owenhouse	304 6-15-1901
J. W. Marcey	Fred Keil	91 6- 1-1901
Herman Mathias	Geo. E. Clark	209 6-15-1901
H. W. Grummer	August Grummer	173 6-15-1901

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<u>Knadler.</u>			
E. M. Knadler	Mrs. Julia McCullough	38	6-15-1887
E. M. Knadler	Mrs. Julia McCullough	86	6-1-1888
E. M. Knadler	Alvina Butro	150	6-15-1887
E. M. Knadler	Alvina Butro	43	6-1-1888
E. M. Knadler	L. L. Blackwood	78	6-15-1887
F. W. & W. F. Collins	F. W. & W. F. Collins	180	6-30-1887

<u>Bopp- McCollough.</u>			
Wm. McCollough	L. L. Blackwood	168	7-15-1889
Henry Bopp	Henry Bopp	131	7-15-1889
Ben Creasy	Henry Bopp	54	6-30-1887
Ben Creasy	Henry Bopp	26	6-12-1899
E. Ketterer	E. Ketterer	40	6-30-1887
J.W. & Laura P. Kirschner	Laura L. Ketterer and Susan Francis	50	6-30-1887

<u>J. B. Weaver.</u>			
J. B. Weaver	Chas. Weaver et al	395	6-15-1887
F. W. Heinrichs	W. J. Hale	371	6-15-1887
Willard Knadler	John Ines	132	6-15-1887
F. R. Merkel	Geo. H. Clark	46	5-15-1888
F. R. Merkel	F. E. Ham	100	5-15-1888
F. R. Merkel	G. W. Keil	240	5-15-1888
F. R. Merkel	Chas. W. Patterson	45	6-20-1891
F. R. Merkel	Katherine McDonnell	45	6-20-1891

<u>J. S. Hoffman.</u>			
J. S. Hoffman	Walter Aitken, exec.	23	6-15-1889
J. S. Hoffman	Walter Aitken	200	6-15-1888
Geo. Deitsch	L. W. Walter	186	6-15-1888
W. D. Brook	R. S. Dawes	168	6-15-1888
W. D. Brook	P. J. Van Dyken	75	6-15-1889
Nicholas Sheplar	Albert Arts	33	6-1-1887
Mary & Emily Sheplar	Albert Arts	71	4-15-1868

<u>Stone & Weaver.</u>			
A. D. Weaver	J. M. Bolen lat.	467	10-15-1866
D. P. Stone	Frank Stone, Adm.	100	10-15-1866
D. P. Stone	Frank Stone, Adm.	30	6-15-1881
D. P. Stone	Frank Stone, Adm.	150	6-15-1883
Leonard Stone	Elizabeth Bowers	82	10-15-1866

<u>Durham Ditch.</u>			
S. F. Durham	C. A. Kinsey	125	11-15-1875
Walter & Lelia Grafton	E. H. Cheney	124	6-15-1898
Lelia P. Grafton	E. H. Cheney	40	7-20-1891
August Johnson	August Johnson	189	7-20-1891
F. R. Merkle	E. A. Mortgage Co.		
	J. P. Fabrick	81	7-20-1891

<u>D. H. Hoffman.</u>			
Geo. Ford	Wm. Fitzstephens	111	6-20-1888
Geo. Ford	Wm. Fitzstephens	21	2-10-1902
D. H. Hoffman	C. A. Holdiman	169	6-20-1888
D. H. Hoffman	Geo. H. Clark	48	6-20-1888
C. A. Holdiman	C. A. Holdiman	111	6-20-1888
A. Holdiman	C. A. Holdiman	27	6-10-1902

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<u>Bell & Dunlop.</u>			
W. D. Bell, Jr. or	W. A. Randall	120	7- 1-1887
C. E. Dunlop	L. C. Reichman	34	7- 1-1887
"	Bart Scollard	160	7- 1-1887
"	Hester M. Bell	57	7- 1-1887
"	Mrs. Viola Dale	43	7- 1-1887
Dave Bell	Hester M. Bell	12	7- 1-1887
"	L. C. Reichman	33	7- 1-1887
"	Bart Scollard	35	7- 1-1887
"	Hester M. Bell	09	7- 1-1899
"	Bart Scollard	24	7- 1-1899
"	L. M. Ferris	90	7- 1-1899
C. E. Dunlop	Cloverdale Apartments	40	6- 8-1894
"	Mrs. Viola Dale	60	6- 8-1894

<u>Creamery Ditch.</u>			
H. H. Cheney	H. H. Cheney	132	6-10-1884
Gallatin Ranch Co.	Dr. C. E. Smith	281	6-15-1866
Claude Robinson	L. C. Reichman	59	6- 1-1870
Claude Robinson	L. C. Reichman	73	6-15-1892
John Robinson	John Robinson	145	6-15-1865
John Robinson	John Robinson	44	6-15-1872
John Robinson	John Robinson	44	6-15-1898

<u>Dawes Ditch.</u>			
R. E. L. Dawes	Mrs. Kate Hutchinson	147	7- 1-1882
Frank Collins	Dr. C. E. Smith	117	7- 1-1882
Robert Porter	Dr. C. E. Smith	44	7- 1-1882

<u>John Williams.</u>			
T. L. & Etta M. Colburn-	Childs & Ancney	164	6-15-1888
Geo. C. Bokley	" "	40	7- 1-1896

<u>Quarry Ditch.</u>			
Geo. C. Bokley	Childs & Ancney	40	6-15-1885

<u>Gillmore-Todd</u>			
Gillmore-Todd Ditch Co.	Childs & Ancney	435	6-15-1881
" " " "	" "	158	6-15-1886

<u>Cockrill Ditch.</u>			
Emma C. Gregg	James McKeaynolds	20	6-15-1882
Emma C. Gregg	C. M. Thorpe	20	6-15-1882
Geo. Cox	Orville Kemp	53	6-15-1881
Mary Cocoran	Mrs. Martin Gary	20	6- 1-1903
Joseph McKeaynolds	C. M. Thorpe	54	6-15-1882
Harry White	C. M. Axtell	59	6-15-1881

<u>Shadoan Ditch.</u>			
Alex Shadoan	Alex Shadoan	163	5- 1-1886

<u>High Line Ditch.</u>			
West Gal. Irr. Co.	High Line Canal Co.	3,400	5- 9-1890
" " " "	" " " "	2,500	6- 1-1901

<u>Sterling Ditch.</u>			
Henry Sterling	Geo. Sterling	85	6- 1-1882

W. P. Todd	<u>Noble Ditch.</u>		
Henry Sterling	W. P. Todd	150	6- 1-1866
Henry Sterling	Geo. Sterling	40	6- 1-1866
Henry Sterling	Geo. Sterling	40	6- 1-1879
O. P. Davis	Geo. Sterling	50	6- 1-1883
Mary Corcoran	J. D. Cloninger	130	6- 1-1866
Roni Monforton	Mrs. Martin Gary	104	6- 1-1877
G. W. Carter	Mrs. Roni Monforton	194	6- 1-1880
G. W. Carter	G. W. Carter	35	6- 1-1877
W. H. Mitchell	Joe Williams	35	6- 1-1877
Peter LeBeau	Anna G. Mitchell	43	6- 1-1877
Ezra Smart	John Stucky	43	6- 1-1877
	Wallace Blain	67	6- 1-1880

Emma C. Gregg	<u>Railley Ditch.</u>		
Geo. C. Miles	F. W. Becklitter	40	6-15-1890
Geo. C. Miles	Rodney R. Blain	35 ¹	6-15-1890
	John Stucky	35 ¹	6-15-1890

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Emma C. Gregg	<u>Carlin Ditch.</u>		
O. R. Railley	F. W. Becklitter	20	6-15-1883
George Cox	F. W. Becklitter	53	6-15-1883
Joe McReynolds	Jas. McReynolds	44	6-15-1881
Emma C. Gregg	C. H. Thorpe	40	6-15-1882
	Jas. McReynolds	20	6-15-1885

Geo. Cox	<u>Cox & Lansing</u>		
Harry White	Orville Kemp	40	6-15-1881
	C. H. Axtell	40	6-15-1881

Damon Gabriel	<u>Gabriel Ditch.</u>		
	Louis Hedges	60	6-15-1866

West Gallatin Irr. Co.	<u>Low Line.</u>		
" " "	Low Line Canal Co.	3,400	5- 9-1890
" " "	" " "	2,500	6- 1-1901

Kughen Ditch Co.	<u>Kughen Ditch.</u>		
" " "	Kughen Ditch Co.	328	6- 1-1874
" " "	" " "	1,551	8-25-1882
" " "	" " "	60	8-25-1885
" " "	" " "	400	6- 1-1886
" " "	" " "	98	6- 1-1889
" " "	" " "	96	6- 1-1890
" " "	" " "	300	6- 1-1894

Mathias Niebel	<u>Clark Ditch.</u>		
Thos. Kirk	Mathias Niebel	40	6- 1-1876
Susan B. Clark	Thos. Kirk	141	6- 1-1883
B. Cameron	Mrs. C. C. Corwin	172	6- 1-1879
D. Cameron	J. R. Cook	150	6- 1-1879
	J. R. Cook	155	6- 1-1883

J. B. Corrie	<u>Corrie Ditch.</u>		
J. B. Corrie	J. L. Bunnell	59	8-15-1883
	J. L. Bartlett	59	5-15-1883

The Valley Ditch Co.	The Valley Ditch Co.		
"	"	545	4- 1-1882
"	"	887	6-10-1890
"	"	2382 4425-1899	6-15-1890
"	"	126	6- 1-1891
"	"	204	6-15-1891
"	"	168	6- 1-1893
"	"	79	6-15-1893
"	"	159	6-15-1896
"	"	242	6-15-1899
"	"	273	6-15-1904

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Lewis Ditch.

S. McKennan	Lester Thompson	398	6-15-1865
Robert Leach	Tom Emmelkamp	125	6-15-1865
Robert Leach	Tom Emmelkamp	51	6-20-1905
Walter H. Sales	Walter H. Sales	264	6-15-1865
Frank Jakle	Simon Cole	167	6-18-1870
Frank Jakle	John Emmelkamp	201	6-18-1870
Henry TeSelle	Harry Te Sells	254	6-15-1870
J. D. Corrie	R. M. Bunnell	63	6-10-1870
C. A. Sales	Oscar Sales	193	6-10-1870
Wm. Smith	N. C. Staffordson	83	6-20-1870
W. S. Erwin	John Hoffman	43	6-15-1897
W. S. Erwin	John Hoffman	60	6-15-1870
W. S. Erwin	Francis Armstrong	207	6-15-1870
Wm. Smith	Francis Armstrong	23	6-20-1870
Alex Smith	Chris Mikkleson	108	6-15-1900-1900
Alex Smith	Chris Mikkleson	57	6- 1-1866
Andrew Morrison	J. P. White	121	6-15-1870
Eugene Buckley	Jacob Droge	274	6-15-1870

Sales-Allen Ditch.

Walter H. Sales	Walter H. Sales	40	6-15-1870
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Moreland.

The Manhattan Co.	The Manhattan Co.	1,918	6-10-1882
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Holgate-Landon.

Chas. A. Holgate	R. G. Shinkle	85	6- 1-1889
A. F. Landon, Adm.	R. G. Shinkle	157	6-15-1894
C. A. Clinton	R. G. Shinkle	49	6-15-1894

Bos Ditch.

Henry Bos	John P. White	203	6- 1-1894
John Bos	Garret Te Nenope	200	6- 1-1894
John Bos	Simon Cole	195	6- 1-1894

White-Fisher.

Chas. T. White	Jacob Droge	120	6- 9-1903
N. H. Fisher	J. R. Kims	184	6- 9-1903

Patillo Ditch.

O. T. Crawford	P. W. Hoon	69	6-20-1903
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White Ditch.

Walter White	Walter White	330	4- 1-1884
John P. White	John P. White	353	4- 1-1884
John P. White	John P. White	172	6-15-1898
John White	Latt White	200	4- 1-1884
John White	Harry White	240	4- 1-1884
Lillian C. Webber	Mrs. J. R. Cassidy	204	4- 1-1884
Texana Lemons	Iva G. Lemons, Exec.	200	4- 1-1884

Mary J. Shannahan	<u>Shannahan Ditch.</u> Chas. Binney	41	6-15-1897
Eugene Buckley (W. Curtis)	<u>Curtis-Buckley.</u> Jacob Broge Tom & Clyde Curtis	178 158	6-10-1894 6-10-1894
O. T. Crawford Robert Bryan	<u>Bryan-Crawford.</u> Tom Curtis Robert Bryan	101 80	6- 1-1887 4- 1-1887
Henry Heeb	<u>Frank Heeb Ditch.</u> Frank Heeb East East Grange.	226	4-15-1892
E. McKinnon	<u>The Manhattan Co.</u>	61	6-15-1866
Henry Heeb Henry Heeb F. H. Duffin	<u>Heeb-Duffin.</u> Memboulet Sheep Co. Duell Heeb Hokan Holansen	103 103 120	6- 1-1866 6- 1-1866 4-15-1866
Harry White	<u>Harry White Ditch.</u> Harry White	143	6-20-1890
E. McKinnon	<u>West Grange.</u> The Manhattan Co.	152	6-15-1870

The "Montana Water Use Act" is being proposed by the Water Law Advisory Council and the Department of Natural Resources and Conservation.

A purpose of the "Montana Water Use Act" is to implement article IX, section 3(4) of the new Montana Constitution, which requires that the Legislature provide for the administration, control and regulation of water rights and establish a system of centralized records of all water rights. *Mr. Wicks*

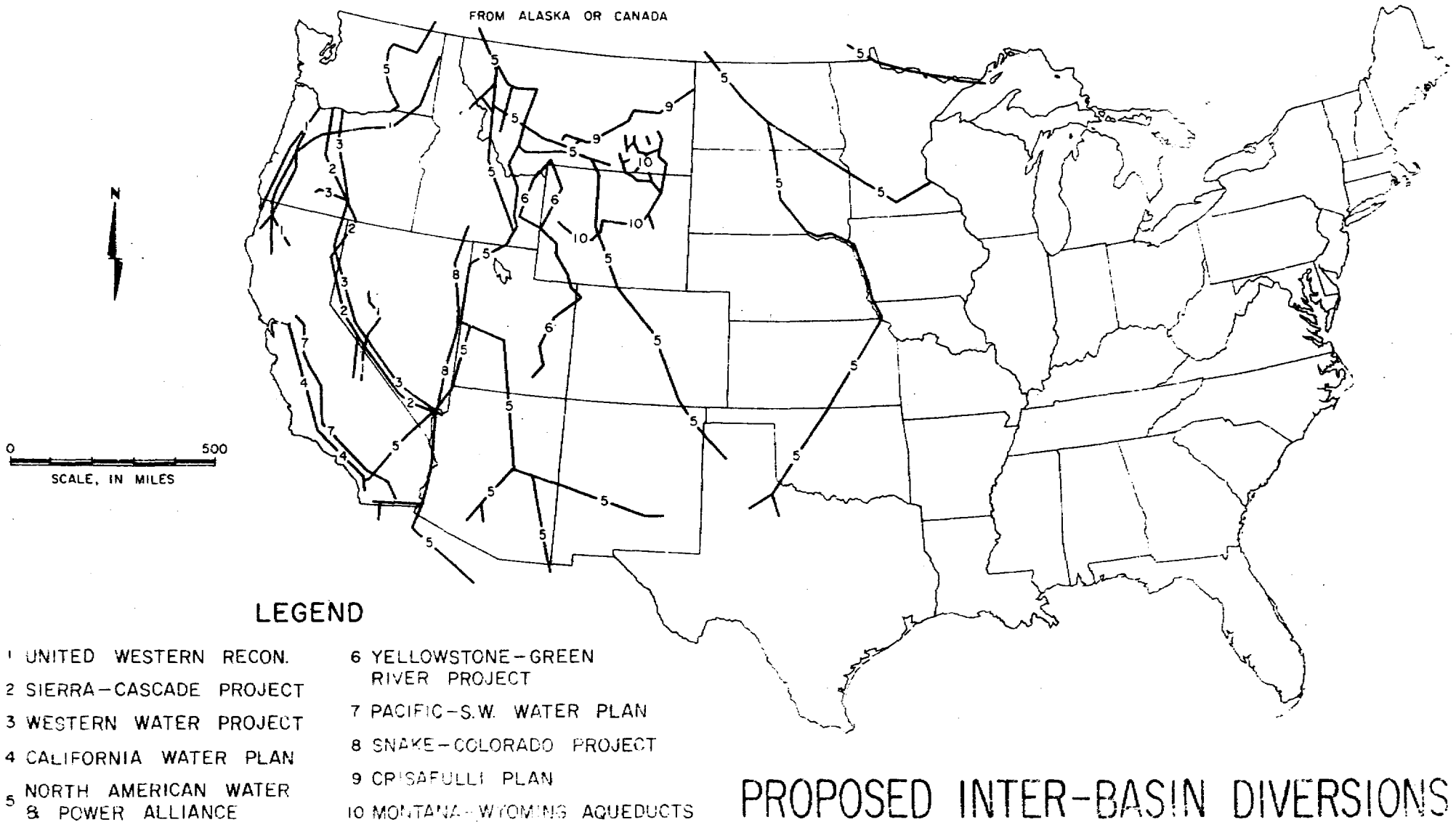
To accomplish this purpose, the Water Law Advisory Council and the Department submitted a preliminary proposal for a Water Use Act to the public during November of 1972. Public hearings were held in nine locations throughout the state to give people an opportunity to voice their opinions on the preliminary proposal. Based upon these hearings plus numerous written comments a final proposal has been presented to the legislature. *Summary of bill*

The "Montana Water Use Act" as finally proposed by the Advisory Council and the Department is Senate Bill No. 444 with Senate Committee on Natural Resources Amendments to SB 444.

The major provisions of the final proposal are as follows:

1. Covers all water - surface water, groundwater and geothermal waters.
2. As provided for in the new Constitution all existing rights to water will be recognized and confirmed.
3. The holders of existing rights, or anyone believing they have an existing right, will be required to file a declaration of their existing right with the Department of Natural Resources and Conservation. Based upon the information in the declaration and other data, a petition for determination of existing rights will be filed in the district court. After the petition is filed, the district court will in accordance with the procedures set forth in the Act issue a preliminary decree and final decree determining existing rights. When a final decree is issued, existing water rights holders will be issued a certificate of water right.
4. After October 1, to acquire a water right, one must apply for and receive a permit from the Department of Natural Resources and Conservation. If the permit is granted, and then the water is put to a beneficial use as provided, the Department will issue a certificate of water right in those areas where existing rights have been determined. The only exception to this procedure is that outside of the boundaries of a controlled groundwater area, a permit is not required before appropriating water for domestic, agricultural, or livestock purposes by means of a well with a maximum yield less than one hundred (100) gallons a minute. When a permit is required it must be issued when the provisions of the Act regarding issuance of permits are met.
5. Any state agency or political subdivision may request the Department of Natural Resources and Conservation to reserve water for future beneficial uses or to maintain a minimum flow in accordance with proscribed procedures.
6. The Act provides for abandonment of a water right after ten successive years of non-use of water after certain procedures are complied with by the Department of Natural Resources and Conservation.
7. The supervision of water among appropriators is the responsibility of district courts. District courts may appoint water commissioners to assist in supervision.
8. The Department of Natural Resources and Conservation may provide legal assistance to any appropriator who is a citizen of Montana that becomes involved in a controversy with any agency of the federal government or another state involving water rights.
9. The transfer of a water right from one use to another must have Department approval.
10. Establishes a centralized filing system for water use rights in the Department of Natural Resources and Conservation, with records also being maintained in the counties.
11. Defines beneficial use as a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power and recreational uses.

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WITNESS STATEMENT

6x.5

Name James T. Pugh Date 2-27-73
Address Bozeman, Route 1 Support ?
Representing 2 Gallatin County Irrig. canals Oppose ? ~~X~~
Which Bill ? S.B. 444 Amend ? X

Comments:

Please leave prepared statement with the committee secretary.

Testimony for Natural Resources Committee of the 43rd Montana Legislature

Mr. Chairman and members of the Committee: I am Jim Paugh

I have irrigated every summer of my life since I was 12 years old with the exception of several summers when I was in the service during World War II. I suppose I spend at least 60 days and some years as many as 120 days working with water wearing a pair of rubber boots. I also, for the past several years have taken care of two canals all summer. I earned a good mark in a course called Irrigation Practices, before I graduated from Montana State University.

I am here representing some of the water users in Gallatin County, with reference to Senate Bill 144, entitled the Montana Water Use Act.

As I understand the present water law; I am entitled to use on my farm 200 miners inches of water. This is by statute convertible to 5 cubic feet per second. This water is available to me ~~in~~ anytime I need it or can use it for a beneficial use, so long as my priority on the stream or river is available.

As I understand this Act; if on my farm I was engaged in raising small grains I would over the past years have an average ~~need~~ of my 200 miners inches from about June 15 - July 10, and after the final decree *under this Act* I would get a water certificate which would state that period as being the time during which I could use my water.

If we should have several dry years, or if I should change my operation to raising Alfalfa Hay and irrigated pastures I would need up to 5 times as much water. After this Act was implemented I would not be able to divert this much water under this system. *(Sec. 8, Part 2 Sec. 13, Part 4)*

I do not feel that this is consistent with Article IX. Natural Resources. Section 3. Water Rights. sub-section (1) of the Constitution which states: "All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed"

I do not feel it is fair to the business communities of our irrigated valleys to be limited to production of the past. We do have a hungry world. We do have to have basic agricultural production to ~~produce~~ have a tax base. Lets protect those private property water rights. I would ask that you not approve this Act., or at the least give us a year to study the proposed changes, or to allow the people who wrote this one rewrite it so that it ~~does~~ confirm our water rights, not jeopardize them.

Thank you

James T. Paugh

I support Mr. Alberto because I want

WITNESS STATEMENT

Ex. 6

Name VERNON L. WEST LAKE Date 2/27/73
Address RTE 1 BOZEMAN, MONT. 59715 Support ?
Representing MYSELF - A WATER USER Oppose ?
Which Bill ? SENATE BILL # 444 Amend ?

Comments:

AS OF THE BEGINNING OF THIS HEARING, I AM
OPPOSED TO THE BILL IN ITS PRESENT STATUS,
I HAVE HAD VERY LITTLE TIME TO STUDY THE
AMENDMENTS AS WILL BE PROPOSED TONIGHT BUT
AM VERY WILLING TO STUDY AND WORK FOR AN
ACCEPTABLE BILL TO BE PRESENTED AT THE
NEXT SESSION OF THE LEGISLATURE.

#1-5
Opposite

Please leave prepared statement with the committee secretary.

February 27, 1973

Mr. Chairman and Members of the Committee, my name is Vernon L. Westlake and am a water user in Gallatin Valley.

I believe that this bill needs more time for study by the people who will be the most affected, they being, the farmers and ranchers of Montana who use this water for irrigation. The reason I make this statement, in my own case, I have had access to this information for only three weeks.

Article IX, section 3, line 1 of the new Constitution states, (1) "All existing rights to the use of any water for any useful or beneficial purpose are hereby recognized and confirmed." This is a guarantee for decreed water rights. Section 7 of Senate Bill #444 states, "Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding prior to the effective date of this act. A decree, which is based on evidence introduced and not upon stipulations or admissions of the parties, is determinative of the rights of the parties to it according to its terms; however, the decree is only prima facie evidence of the decreed rights of there are persons who claim rights, by filing declarations under section 8, which were not determined when the source of water was adjudicated." The paragraph continues with the actual information that is required. The important point in this section is that a recorded decree of a water right is only prima facie evidence of the water right, and that is contradictory to the above statement of the new Constitution in my opinion. I firmly believe

Hearing on Senate Bill #444

this section will start enough litigation over water rights, to fill our courts for five years and cost the farmers and ranchers a very large sum of money in legal fees. The reason this will take place, Section 7 will open gate for any person to make a declaration and apply for a permit, then it will be up to the people with the adjudicated water rights to show that there isn't justification for those persons to be given permits.

Sections 8 through 12 outline the procedure involved for all of this determination. Section 13 which is titled Final decree. Paragraph 4 states: "For each person who is found to have an existing right, the decree shall state:

- (a) name and post office address of the owner of the right;
- (b) amount of water included in the right;
- (c) date of priority of the right;
- (d) purpose for which the water included in the right is used;
- (e) place of use and description of the land to which the right is appurtenant;"

(This presents a problem as many existing rights have been transferred from the original place of use and are now being used on different farms or in some instances, on several different farms and at different times.)

- "(f) source of the water included in the right;
- (g) place and means of diversion;
- (h) time during which the water is used each year;"

(I want to comment that this is a highly variable factor and should be taken into account.)

- "(i) any other information necessary to fully define the nature and extent of the right."

(Let's define exactly what has to be included in the final

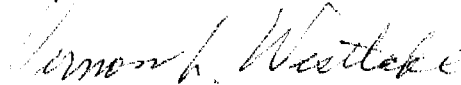
Hearing on Senate Bill #444

decree, to me, that is what law is.

I am only making a point of the way that the bill deals with existing water rights. I know there are other problem areas in the bill but three weeks does not allow enough time to study and understand this complicated piece of legislation. We are dealing with Montana's most important resource, and I sincerely recommend to the Committee that they seriously consider tabling the bill and making a complete study of the bill and ammendments for one year, and then present it at the next session of the Legislature.

Thank you for allowing me to be heard tonight.

Respectfully submitted,



Vernon L. Westlake
Route 1
Bozeman, Montana 59715

WITNESS STATEMENT

1
of 11

Name W J Gilbert Jr Date 27 Feb 73
 Address Dillon Montana Support ?
 Representing Waterbury Irrigation Co West Side Canal Co Oppose ?
Reddy Water Users Assn Big Horn Canal Co
 Which Bill ? S B 444 Amend ? X

Comments: Propose Amendment of ~~act~~ bill
to include proposals made by me and
supported by Montana Water Development Assn

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

104

Name E. Everett Swatland Date 2/27/73
Address Canrad Support ?
Representing Montana Farm Bureau Oppose ?
Which Bill ? SB 444 Amend ? X

Comments:

We support Mr. K. W. Gilbert proposed
amendments to SB 444

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

9
4071

Name Wes D'Ewart Date 2/27/73
Address Wilsall, 1st Support ?
Representing Farm Bureau Oppose ? X
Which Bill ? SB 444 Amend ? X

Comments:

would like to make statement

Please leave prepared statement with the committee secretary.

Mr. Westlake
Hearing on Senate Bill #444

February 27, 1973

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Hearing on Senate Bill 1444

this section will start enough litigation over water rights, to fill our courts for five years and cost the farmers and ranchers a very large sum of money in legal fees. The reason this will take place, Section 7 will open gate for any person to make a declaration and apply for a permit, then it will be up to the people with the adjudicated water rights to show that there isn't justification for those persons to be given permits.

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- (b) amount of water included in the right;
- (c) date of priority of the right;
- (d) purpose for which the water included in the right is used;
- (e) place of use and description of the land to which the right is appurtenant;"

(This presents a problem as many existing rights have been transferred from the original place of use and are now being used on different farms or in some instances, on several different farms and at different times.)

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(g) place and means of diversion;

(h) time during which the water is used each year;"

(I want to comment that this is a highly variable factor and should be taken into account.)

"(i) any other information necessary to fully define the nature and extent of the right."

(Let's define exactly what has to be included in the final

Hearings on Senate Bill 1111

decree, to me, that is what law is.

I am only making a point of the way that the bill deals with existing water rights. I know there are other problem areas in the bill but three weeks does not allow enough time to study and understand this complicated piece of legislation. We are dealing with Montana's most important resource, and I sincerely recommend to the Committee that they seriously consider tabling the bill and making a complete study of the bill and amendments for one year, and then present it at the next session of the Legislature.

Thank you for allowing me to be heard tonight.

Respectfully submitted,



Vernon L. Westlake
Route 1
Bozeman, Montana 59715

The "Montana Water Use Act" is being proposed by the Water Law Advisory Council and the Department of Natural Resources and Conservation.

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To accomplish this purpose, the Water Law Advisory Council and the Department submitted a preliminary proposal for a Water Use Act to the public during November of 1972. Public hearings were held in nine locations throughout the state to give people an opportunity to voice their opinions on the preliminary proposal. Based upon these hearings plus numerous written comments a final proposal has been presented to the legislature. Summary of Act

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10. Establishes a centralized filing system for water use rights in the Department of Natural Resources and Conservation, with records also being maintained in the counties.
11. Defines beneficial use as a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power and recreational uses.

Thursday, March 1, 1973 --Page 2

Chairman Sheldon announced that the subcommittee on 208 would be ready to report to the committee on Saturday. The meeting would start at 8 a.m. on that day. There would be a hearing on SB 300 on Saturday, also.

Chairman Sheldon announced that the subcommittee for SB 444 was composed of Rep. Huennekens, chairman; Rep. Lucas; and Rep. Swanberg.

Chairman Sheldon asked for a motion to adjourn, Rep. Johnston so moved, motion carried, meeting adjourned at 11:40 a.m.

Respectfully submitted,

Arthur H. Sheldon

ARTHUR H. SHELDEN
Chairman

eas

Tuesday, March 6, 1973

The Natural Resources Committee was called to order by Chairman Shelden in room 405 at 10:30 a.m. Chairman Shelden opened the meeting to a consideration of Senate Bill 444.

SENATE BILL 444:

Rep. Huennekens moved the committee adopt the amendments prepared and presented by the subcommittee. A copy of these is included with the minutes.

In the following discussion Rep. Huennekens said the amendments marked with an asterisk were taken from Mr. Gilbert's amendments. He stated the subcommittee (himself, Lucas, Swanberg) had had a number of meetings with members of the Natural Resources Department, Mr. Fred Johnson, Mr. Henry Loble and others.

Also mentioned was the moratorium which lasts until 1978--which keeps states from taking water from other states. This moratorium was to give states like Montana an opportunity to get their water rights in order so they would know what they were using and what they will need in the future. This fact makes a law like this imperative. Chairman Shelden mentioned when you consider what an acre foot of water is worth here and what it would be worth in the Imperial Valley of California--we are not starting any too soon.

The committee agreed this was a complicated bill with far reaching implications and it might need further work at the next session; but the feeling seemed to be that the bill should not be delayed.

Rep. Swanberg went through the important items that the amendments covered. Four additional changes had been made by the subcommittee which weren't on the typewritten copies: struck was the first amendment on page 2 of the amendments and the ninth one on page 4; added was one on page 41 (of the Senate Third Reading Bill), lines 3 and 4, striking them in their entirety; added, also, was one on page 57 of the same bill, lines 20 through 22, starting with the "," on line 20 striking them in their entirety and inserting in lieu thereof the following: "there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used."

Action was taken on Rep. Huennekens's motion. It carried unanimously except for those absent (Ainsworth and Johnston).

Rep. Huennekens moved that SB 444 be concurred in as amended. The motion carried unanimously. Reps. Bradley and Lucas had had to leave for other meetings but requested their vote be cast in favor of concurring. Reps. Ainsworth and Johnston were absent.

SENATE BILL 443:

Chairman Shelden stated this bill had been concurred in as amended on February 26, but when Senate Bill 94 removed bentonite from its coverage; this bill was recalled to include bentonite.

Rep. Huennekens moved that throughout the bill bentonite be inserted in the appropriate places and sand and gravel struck in the appropriate places. The motion carried unanimously except for those absent (Ainsworth, Lucas, Johnston, Bradley).

SENATE BILL NO. 444

PROPOSED AMENDMENTS TO SENATE THIRD READING BILL

- Title*
* Amend on page 1, line 5, by deleting the number and punctuation "89-125,"
- Title*
* Further amend on page 1, lines 5 and 6, by deleting "89-819, 89-823 THROUGH 89-826" and inserting in lieu thereof "89-804, 89-807 through 89-816"
- Title*
* Further amend on page 1, line 6, following "89-829 THROUGH" by inserting "89-842, 89-844 and"
- Title*
* Further amend on page 1, line 7, following the number "89-1001" by inserting the punctuation ","
- Title*
* Further amend on page 1, line 16, by deleting the number and punctuation "89-125,"
- Title*
* Further amend on page 1, lines 16 and 17, by deleting "89-819, 89-823 THROUGH 89-826" and inserting in lieu thereof "89-804, 89-807 through 89-816"
- Title*
* Further amend on page 1, line 17, following the number and word "89-829 THROUGH" by inserting "89-842, 89-844 and"
- Title*
* Further amend on page 1, lines 22 and 23, by deleting "; AND PROVIDING AN EFFECTIVE DATE"
- Title*
* Further amend on page 34, line 21, by deleting the punctuation "." and inserting in lieu thereof the punctuation ":",
- Title*
* Further amend on page 34, between lines 21 and 22, by inserting the following:
- "(e) Upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department under this act."

Further amend on page 36, lines 4 through 7, by deleting the material therein in its entirety

Further amend on page 36, line 8, following the "(1)" by inserting the following:

"The department shall establish a centralized record system of all existing rights, and"

Further amend on page 36, line 9, following the word and punctuation "PRACTICABLE," by inserting the words "begin proceedings under this act to"

Further amend on page 36, line 15, following the word "FIRST" by inserting the words "begin proceedings under this act to"

Further amend on page 36, lines 22 through 25, and on page 37, lines 1 through 4, by deleting the material therein in its entirety beginning with the word "A" on line 22 on page 36 and continuing through the word and punctuation "ADJUDICATED," on line 4 on page 37

Further amend on page 37, line 25, by deleting "SIX (6) MONTHS" and inserting in lieu thereof "one (1) year"

Further amend on page 38, line 16, following the word "OATH" by inserting the following:

"by each person claiming an existing right to use water within the specified area or from the specified source"

Further amend on page 38, line 25, following the word "COPY" by inserting the words "or the docket number"

Further amend on page 39, line 17, by deleting "TEN (10)" and inserting in lieu thereof, "thirty (30)"

Further amend on page 40, line 2, following the word "AGI" by inserting the following:

"and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source"

Further amend on page 40, line 22, following the words "IN THE" by inserting the following:

"petition filed under section 9 of this act or named in the preliminary"

Further amend on pag. 41, line 1, following the word "THE" by inserting the following:

~~"petition or in the"~~ *petition or in the*

Further amend on page 41, line 2, following the word "OBJECTIONS" by inserting the following:

", and he may purchase copies of any of the data;"

Further amend on page 41, lines 6 and 7, by deleting in its entirety the material beginning with the word "WHOSE" on line 6 and continuing through the word "AND" on line 7 and insert in lieu thereof the following:

"named in the petition filed under section 9 of this act or named in the preliminary decree, or any other person for good cause shown,"

Further amend on page 41, line 12, by deleting "SIXTY (60)" and inserting in lieu thereof the following: "ninety (90)"

Further amend on page 41, lines 12 and 13, by deleting the words "THE EFFECTIVE DATE" and inserting in lieu thereof the word "receipt"

Further amend on page 41, line 13, following the words and punctuation "DECREE." by inserting the following:

"The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree."

Further amend on page 41, line 15, by deleting the words "AS IN CIVIL ACTIONS" and inserting in lieu thereof the following:

"by certified mail with return receipt requested"

Further amend on page 43, line 10, following the first word "THE" by inserting the word "approximate"

Further amend on page 44, by deleting the material on lines 13 through 15 in its entirety

Further amend on page 45, by deleting the material on lines 3 through 10 in its entirety, beginning with "(1)" on line 3

of the act and (2)
Further amend on page 45, line 11, by deleting "(2)" and inserting in lieu thereof "(1)" *re-numbering subsection 4. subsection (1)*

Further amend on page 45, line 18, by deleting "(3) AFTER THE EFFECTIVE DATE OF THIS ACT, AND" and inserting in lieu thereof "(2)"

Further amend on page 45, line 19, by deleting the words "THIS ACT" and inserting in lieu thereof "subsection (4) of this section"

Further amend on page 46, line 7, by deleting "(4)" and inserting in lieu thereof "(3)"

Further amend on page 46, line 19, by deleting "(5)" and inserting in lieu thereof "(4)"

Further amend on page 47, lines 9 through 15, by deleting the material therein in its entirety beginning with the word "PERSON" on line 9 and continuing through the word and punctuation "DILIGENCE," and inserting in lieu thereof the word and punctuation "appropriator."

Further amend on page 47, line 15, by deleting the words "SHALL DETERMINE THE" and inserting in lieu thereof the following:

6
"the notice of completion is the date of"

Further amend on page 47, line 17, by deleting "(6)" and inserting in lieu thereof "(5)"

Further amend on page 48. Sec 4 change "7" to "6"
(X) Further amend on page 48, lines 4 through 6, by deleting the material therein in its entirety

Further amend on page 52, line 16, by deleting the word "CERTIFICATE" and inserting in lieu thereof the word "permit"

Further amend on page 53, line 15, by inserting after "(2)" the following:
"Except as provided in section 16(4) of this act,"

Further amend on page 54, line 15, by deleting the word "RESERVATION" and inserting in lieu thereof the word "reservation" *sub 26, section 5*

Further amend on page 55, line 8, by ~~deleting~~ the words "EXISTING RIGHTS" and inserting in lieu thereof the following:

"any rights in existence when the order reserving waters is adopted" *sub 26, section 16*

Further amend on page 55, line 11, following the word "MET," by inserting the following:

"Where the objectives of the reservation are not being met, the board may revoke or modify the reservation." *sub 27, section 6*

Further amend on page 56, line 11, following the word and punctuation "CHANGE." by inserting the following:

"Notice of the proposed change shall be given in accordance with section 17 of this act."

Section 31, sub section (1) and (2), lines 1 through 23
Further amend on page 58, by deleting the material on lines 7 through 23 in its entirety, beginning with the word "SERVE" on line 7, and inserting in lieu thereof the following words and punctuation:

"petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeals shall be taken in accordance with the Montana Rules of Appellate Civil Procedure."

Section 31, sub (3)
Further amend on page 58, line 24, by deleting "(3)" and inserting in lieu thereof "(2)" *Section 31, sub (2), (4) and (5)*

Further amend on page 59, lines 1 through 10, by deleting the material in its entirety *Section 31, sub (3)*

Further amend on page 59, line 10, by deleting all the material before the word "SHALL", and inserting in lieu thereof the following: "(3) The determination of the court" *Section 31, sub (3)*

Further amend on page 59, line 11, by deleting the word "THAT" and inserting in lieu thereof the word "the"

Further amend on page 59, line 12, by deleting the word "ORDER" and inserting in lieu thereof the word "determination"

- aut. 32, sub. (2)*
- * *X* Further amend on page 59, lines 21 through 25 and on page 60, lines 1 through 4, by deleting the material therein in its entirety *OK*
- aut. 32 sub. (3)*
- * *X* Further amend on page 60, line 5, by deleting "(3)" and inserting in lieu thereof "(2)"
- aut. 32, sub. 3 following the word "Controversy"*
- * *X* Further amend on page 60, lines 5 and 6, by deleting "INVOLVING A CLAIMANT OF AN EXISTING RIGHT" *OK*
- aut. 32, sub. 3*
- * *X* Further amend on page 60, lines 9 and 10, by deleting the material therein in its entirety beginning with the first word "OR" on line 9 and continuing through the word "PROCEED" on line 10 *OK*
- aut. 32, sub. (3)*
- * *X* Further amend on page 60, line 10, following the word "TIME" by inserting the words "begin proceedings" *OK*
- aut. 32, sub. (3) follow -*
- * *X* Further amend on page 60, lines 14 through 16, by deleting the material therein in its entirety following the word and punctuation "PARTIES." on line 14 *OK*
- aut. 32, sub. (4)*
- * *X* Further amend on page 60, line 17, by deleting "(4)" and inserting in lieu thereof "(3)" *OK*
- aut. 32, sub. (4)*
- * *X* Further amend on page 60, line 19, by inserting between the word "UNDER" and the word "THIS" the words and numbers "sections 6 through 15 of"
- aut. 32 sub. (5)*
- * *X* Further amend on page 61, line 5, by deleting "(5)" and inserting in lieu thereof "(4)"
- aut. 38,*
- * *X* Further amend on page 63, line 18, following the word and punctuation "FUND." by inserting the following:
- aut. 39, sub. 1, following the words "by a"*
- * *X* Further amend on page 63, line 25, by deleting the word "final" *OK*
- aut. 39, sub. (1) following the first word "the"*
- * *X* Further amend on page 64, line 5, by deleting the word "final" *OK*
- aut. 39, sub. (1) following the first word "the"*
- * Further amend on page 64, line 8, by deleting the words "bound by the final" and inserting in lieu thereof the following:
- aut. 39, sub. (1) following the first word "the"*
- "owning water rights in the source affected by the"

*

sect 51, sub (1)
X Further amend on page 64, line 10, by deleting the word "final"

sect 51, sub (1)
X Further amend on page 64, line 10, following the words and punctuation "or-decrees," by inserting the following: "and by any certificates and permits issued under the Montana Water Use Act"

sect 51, sub (2)
X Further amend on page 64, line 19, by inserting after the word "decree" and before the comma the following: "issued under the Montana Water Use Act"

sect 51, sub (5) following the word "and"
X Further amend on page 66, lines 8 and 9, by deleting the words and punctuation "decreed, stored and supplemental" and inserting in lieu thereof the words "the distributed"

sect 40, sub. (a)
X Further amend on page 66, line 25, by inserting (without underlining) the word "area" after the second word "water" and before the word "or"

*

sect 44
Further amend on page 73, line 20, following the word and punctuation "incorrect." by inserting the following:

"The administrator shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology."

sect 46
X Further amend on page 74, line 4, by deleting "89-125,"

sect 46
X Further amend on page 74, line 5, by deleting all the material after the first word "through" and before "89-829", and inserting in lieu thereof the following: "89-804, 89-807 through 89-816,"

sect 46 5 following the word "through" by inserting the word "and" before "89-845"
Further amend on page 74, line 6, by inserting before "89-845" the following: "89-842, 89-844 and"

Further amend on page 74, lines 9 and 10, by deleting the material following "Section 47." and before the punctuation "." and inserting in lieu thereof the following:

"If a part of this act is invalid, all valid parts that are severable from the valid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications "

deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars (\$2). Interest will be computed at the rate of nine per centum (9%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in the subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of nine per centum (9%) per annum from the time when the return was originally required to be filed to the time of payment."

Section 2. This act shall be effective for all taxable years ending on and after December 31, 1972.

Section 3. This act shall be effective upon its passage and approval.

Approved: March 23, 1973.

CHAPTER NO. 451

An Act to Provide for the Establishment of Requirements on Milk for Manufacturing Purposes and its Production and Processing, Known as the "Manufactured Dairy Products Act"; Repealing Section 3-24-112, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Licenses and schedule of license fees. Licenses and license fees required under this act are as follows:

(1) Manufactured dairy products plant \$50
However, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in section 27-612; and no license is required to manufacture nondairy products when only such products are manufactured.

(2) Cream station..... \$5
However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premise and means of transporting milk or cream is subject to official inspection.

(3) Dairy producing milk for manufacturing purposes.....\$5
However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in

the form in which it is originally produced as required by section 46-232.

- (4) Grader-weigher-sampler..... \$5
- (5) Tester..... \$10
- (6) Hauler..... \$5

However, a separate grader-weigher-sampler, tester and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant or is self-employed.

A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from place to place nor from person to person. A penalty of five dollars (\$5) per month, or fraction of a month, after January 31 may be imposed by the department on a person who fails to apply for renewal of his license if under the act that person is required to be licensed.

All license fees collected shall be deposited in the general fund.

Section 2. Section 3-24-112, R.C.M. 1947, is repealed.

Approved: March 23, 1973.

CHAPTER NO. 452

An Act Providing for the Appropriation and Use of Surface and Groundwater; Providing a Procedure for the Determination and Confirmation of Existing Water Rights; Establishing a System of Centralized Records of All Water Rights; Repealing Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R.C.M. 1947; Amending Sections 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Short Title. This act shall be known and may be cited as the "Montana Water Use Act."

Section 2. Declaration of policy and purpose. (1) Pursuant to article IX of the Montana constitution, the legislature declares that any use of water is a public use, and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX, section 3(4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation and future beneficial use and development of Montana's water for the state and its citizens, and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this act to encourage the wise use of the state's water resources by making them available for appropriation consistent with this act, and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to article IX, section 3(4) of the Montana constitution, it is further the policy of this state and a purpose of this act to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

Section 3. Definitions. Unless the context requires otherwise, in this act:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in

the case of a public agency to reserve water in accordance with section 26.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 16 through 23.

(8) "Certificate" means the certificate of water right issued by the department under sections 15, 16(4), and 24.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8.

(10) "Waste" means the unreasonable loss of water through the design or neglect operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(12) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15.

(13) "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

Section 4. Powers and duties of department. (1) The department shall:

(a) enforce and administer this act and rules adopted by the board under section 5;

(b) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, and proceedings under this act, and prescribe the information to be contained in

any application, declaration or other document to be filed with the department under this act;

(e) keep in its Helena office a centralized public record of permits, certificates, declarations, applications, and other documents filed in its office under this act;

(d) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this act;

(e) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department under this act.

(2) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this act;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this act.

Section 5. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations;

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

Section 6. Determination of existing rights. (1) The department shall establish a centralized record system of all existing rights, and the department shall, as soon as practicable, begin proceedings under this act to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is most urgent, and first begin proceedings under this act to determine the existing rights in those areas or sources.

Section 7. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights;

(2) declaration of existing rights filed under section 8;

(3) records of rights acquired under the groundwater code (sections 89-2911 through 89-2936);

(4) notices of appropriation filed under sections 89-801.2 and 89-810;

(5) records of declaration filed under sections 89-121 and 89-813;

(6) records of statements filed under section 89-907;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes.

Section 8. Declarations of existing rights. (1) The department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area

or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration.

Section 9. Filing of petition. (1) The department shall, within a reasonable time after gathering all data necessary under section 7 of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8. The department shall file the petition in the district court of the judicial district in which the source or area is located.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the notice, the judges of those district courts shall agree on which district judge shall hear the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which the greatest number of persons named in the petition reside.

Section 10. Contents of petition. (1) The petition shall state the names of all persons who have filed declarations under section 8 of this act and of all other persons who appear from the

data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall file with the petition all data gathered under section 7 of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

Section 11. Preliminary decree. (1) Within a reasonable time after the filing of a petition for determination of existing rights, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted with the petition and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 13 of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the petition filed under section 9 of this act or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the petition or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data.

Section 12. Hearing on preliminary decree. (1) The department or a person named in the petition filed under section 9 of this act or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hear-

ing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing.

Section 13. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

- (a) the name and post office address of the owner of the right;
- (b) the amount of water included in the right;
- (c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the approximate time during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree.

Section 14. Appeals from final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as the result of a hearing, at which he appeared, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure.

Section 15. Certificate of water right. When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of the final decree, issue to each person decreed an existing right a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

Section 16. Right to appropriate — application for permit. (1) After the effective date of this act, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse

use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (4) of this section, a person may appropriate water only by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(4) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater for domestic, agricultural, or livestock purposes by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(5) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with all of the filing requirements of this act to

the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act.

(6) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 5 of this act.

Section 17. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 26. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

Section 18. Objections. (1) An objection to an application must be filed by the date specified by the department under section 17(2).

(2) The objection must state the name and address of the objector, and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

Section 19. Hearings on objections. If the department determines that an objection to an application for a permit states a valid

objection to the issuance of the permit, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one (1) objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

Section 20. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested.

Section 21. Criteria for issuance of permit. The department shall issue a permit if:

- (1) there are unappropriated waters in the source of supply;
- (2) the rights of a prior appropriator will not be adversely affected;
- (3) the proposed means of diversion or construction are adequate;
- (4) the proposed use of water is a beneficial use;
- (5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

Section 22. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no

case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this act.

(2) The department may limit the time for commencement of the appropriation works, completion of construction and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the permit to the permittee.

Section 23. Revocation of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the department may after notice require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

Section 24. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

(2) Except as provided in section 16 (4) of this act, a certificate of water right in a particular source may not be issued prior to a general determination under this act of existing rights in that source.

Section 25. Reservoirs. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this act.

Section 26. Reservation of waters. (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 17 through 19. After the hearing provided in section 19, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (a) the purpose of the reservation;
- (b) the need for the reservation;
- (c) the amount of water necessary for the purpose of the reservation;
- (d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall not affect any rights in existence when the order reserving waters is adopted.

(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation.

Section 27. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this act dates from the filing of an application for a permit with the department, except as otherwise provided in section 16 of this act.

(3) Priority of appropriation perfected before the effective date of this act shall be determined as provided in sections 6 through 15 of this act.

Section 28. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage without receiving prior approval of such change from the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If a person whose rights may be affected files an objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Notice of the proposed change shall be given in accordance with section 17 of this act. Objections shall meet the requirements of section 18(2) of this act, and hearings shall be held in accordance with section 19.

Section 29. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) A copy of an instrument which transfers an interest in an appropriation right shall be filed with the department and the county, in which the point of diversion or place of use is located, by the person receiving the appropriation interest.

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or

sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed transfer if the requirements of section 28(2) are met.

Section 30. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right, or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right, or ceases using his appropriation right according to its terms and conditions, for a period of ten (10) successive years, and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) This section does not apply to existing rights until they have been determined in accordance with this act.

Section 31. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under section 30, or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under section 30 of this act.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

Section 32. Supervision of water distribution. (1) As of the effective date of this act, the district courts shall supervise the distribution of water among all appropriators. This supervisory

authority includes the supervision of all water commissioners appointed prior to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections 6 through 15 of this act, the department may, in its discretion, within a reasonable time begin proceedings to determine existing rights in the source, in accordance with this act. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections 6 through 15 of this act shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department.

(4) The department shall be named as a party in any proceeding under this section and shall be served with process.

Section 33. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water, or to secure water to a person having a prior right to its use; the department may attach to the controlling works a written notice properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so, and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(2) The department may also direct its own attorney or re-

quest the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

Section 34. Entry on land — inspections. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

Section 35. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this act. The department may also employ legal counsel to enforce this act and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

Section 36. Hearings before board—Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act.

Section 37. Penalties. A person who violates or refuses or neglects to comply with sections 16(1), 28(1), and 29(3) of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor.

Section 38. Deposit of fees and penalties. All fees and penalties collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of this act shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

Section 39. Section 89-1001, R.C.M. 1947, is amended to read as follows:

“89-1001. **Appointment of water commissioners — authority**

— **compensation.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by *the decree and by any certificates and permits issued under the Montana Water Use Act* provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) *When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under the Montana Water Use Act, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.*

(3) *The department of natural resources and conservation or any person or corporation operating under contract with the department, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.*

(4) *Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of the state Water Conservation Act, chapter 1 of this Title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters*

shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation."

Section 40. Section 89-2911, R.C.M. 1947, is amended to read as follows:

"89-2911. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(a) "Ground water" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(f) "Administrator" means the department of natural resources and conservation provided for in title 82A, chapter 15.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to inclose a single

and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Section 41. Section 89-2915, R.C.M. 1947, is amended to read as follows:

"89-2915. **Limiting withdrawals — hearing and order.** (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the administrator has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the administrator that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The administrator shall have the authority to enforce the order; to require persons to cease such excessive withdrawals in reverse order of their priority of rights; and to bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the administrator in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board shall have authority after notice and hearing as heretofore provided in

this section, to modify or revoke its order upon a showing by any interested party and a finding by the *board* that conditions have materially changed since the prior order. While a matter is pending before the *board*, the administrator shall have discretion and authority to restrict further development of the subarea."

Section 42. Section 89-2917, R.C.M. 1947, is amended to read as follows:

"89-2917. **Scope of administrative hearing.** (1) In any hearing for the ascertainment and finding of priorities to the use of ground water, the administrator in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, shall be entitled in such particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water shall not be drawn by appropriators. The administrator shall act in administering and enforcing the provisions of the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the administrator shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915."

Section 43. Section 89-2918, R.C.M. 1947, is amended to read as follows:

"89-2918. **Permit required to appropriate in controlled area.** A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the administrator in accordance with the Montana Water Use Act. The administrator shall not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments).

Section 44. There is a new section 89-2928.1, R.C.M. 1947, which reads as follows:

89-2928.1. **Well Logs.** Within sixty (60) days after any well is completed, the driller shall file with the administrator a well log report on a form provided by the administrator at its offices

and at the offices of the county clerks and recorders. The administrator may return the report for refileing if it is incomplete or incorrect. The administrator shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

Section 45. There is a new section 89-2934.1, R.C.M. 1947, which reads as follows:

89-2934.1. **Hearings before board — Administrative Procedure Act.** (1) A person who is aggrieved by a final decision of the administrator under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs administrative proceedings under this chapter.

Section 46. Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, 89-2935, R.C.M. 1947, are repealed.

Section 47. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved: March 23, 1973.

CHAPTER NO. 453

An Act Implementing Article II, Section 29 of the 1972 Montana Constitution, by Providing for an Award Including necessary Expenses of Litigation when the private property owner prevails; Repealing Section 93-9921, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 93-9921.1, R.C.M. 1947, which reads as follows:

93-9921.1. **Necessary expenses of litigation.** The condemnor, shall within thirty (30) days after an appeal is perfected from the commissioner's award or report, submit to condemnnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnnee then accrued.

If at any time prior to ten (10) days before trial, the condemnnee serves written notice that the offer is accepted, either party